

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

ORIGINAL

76-4226

United States Court of Appeals
FOR THE SECOND CIRCUIT

BRITISH AIRWAYS BOARD, *Petitioner,*
against

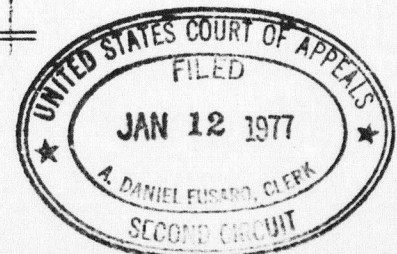
CIVIL AERONAUTICS BOARD,
Respondent.

ON PETITION FOR REVIEW FROM THE
CIVIL AERONAUTICS BOARD

JOINT APPENDIX

WILLIAM C. CLARKE
PETER F. VETRO
Attorneys for Petitioner
British Airways Board
245 Park Avenue
New York, New York 10017
(212) 983-5352

JAMES C. SCHULTZ
General Counsel for Respondent
Civil Aeronautics Board
Washington, D.C. 20428
(202) 673-5233



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DOCKET ENTRIES OF CIVIL AERONAUTICS BOARD
DOCKET NO. 29778

DOCKET ENTRIES

CIVIL AERONAUTICS BOARD

Docket No. 29778

DATE	MATERIAL RECEIVED
09-14-75	<p>Order 76-9-74 directing Air BVI Limited, British Airways Board, British Caledonian Airways Limited, Cayman Airways Limited, and LIAT (1974) Limited to file with the Civil Aeronautics Board (Attention: Director, Bureau of International Affairs) within seven days after service of this order (September 28, 1976) an original and three copies of any and all of their existing schedules of service between the United Kingdom, its territories and possessions, and the United States, including scheduled services via intermediate points and to points beyond the United States, which shall include:</p> <ul style="list-style-type: none">(a) The type of equipment used (including the number of seats, by class of service, on aircraft normally assigned, by flight);(b) The times of arrival and departure at each point; and(c) The frequency and day(s) of operation of each flight; <p>That the above-named foreign air carriers shall file with the Civil Aeronautics Board (Attention: Director, Bureau of International Affairs) an original and three copies of any and all proposed schedules of service between the United Kingdom its territories and possessions, and the United States, including the information noted in ordering paragraph 1 above the proposed effective date of such schedules, and the proposed termination date of such schedules (if determined), at least 30 days prior to inauguration of service; Served 9/17/76</p>
09-27-76	<p>Motion of British Airways for Stay of Order 76-9-74.</p>

Docket Entries of Civil Aeronautics Board
Docket No. 29778

DOCKET ENTRIES

CIVIL AERONAUTICS BOARD

Docket No. 29778

DATE	MATERIAL RECEIVED
09-30-76	<p>Order 76-9-161, except to the extent granted below, solely with respect to the third Concorde frequency proposed to be inaugurated at Washington on October 5, the motion of British Airways for stay of Order 76-9-74, is denied;</p> <p>Order 76-9-74 is stayed, to the extent, but only to the extent, that it would otherwise require that British Airways file its proposed third Concorde frequency at Washington commencing October 5, 1976, on or before September 28, 1976; and</p> <p>That on or before October 6, 1976, British Airways Board shall file as an "existing" schedule its currently proposed third Concorde frequency at Washington provided such frequency has in fact been inaugurated on or prior to October 6, 1976. Such filing shall be in accordance with the procedures for the filing of existing schedules set forth in Order 76-9-74. Minetti and West, members, filed concurring and dissent. Served 9/30/76</p>
09-30-76	<p>Report of British Caledonian Airways Limited pursuant to Order 76-9-74, regarding schedules from November 1, 1974.</p>
09-30-76	<p>Report of Air BVI Limited pursuant to Order 76-9-74 of schedules from September 15, 1976, through December 14, 1976.</p>
09-30-76	<p>Report of Cayman Airways, Ltd. pursuant to Order 76-9-74, of schedules.</p>
10-21-76	<p>Board Recommendation to the President, submitted to the public. Served 10/21/76</p>
10-26-76	<p>Order 76-10-110, vacating Orders 76-9-74 and 76-9-161 and their effectiveness terminated nunc pro tunc as of October 8, 1976. This order shall be subject to any necessary approval by the United States Court of Appeals for the Second Circuit. Served 10/26/76.</p>

ORDER 76-9-74 OF THE CIVIL AERONAUTICS BOARD
ADOPTED SEPTEMBER 14, 1976

Order 76-9-74



UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 14th day of September, 1976

In the matter of the :
Schedules of :

AIR BVI LIMITED :

BRITISH AIRWAYS BOARD :

BRITISH CALEDONIAN AIRWAYS LIMITED :

CAYMAN AIRWAYS LIMITED :

LIAT (1974) LIMITED :

Docket 29778

ORDER TO FILE SCHEDULES

Air BVI Limited, British Airways Board (British Airways), British Caledonian Airways Limited, Cayman Airways Limited, and LIAT (1974) Limited are the holders of foreign air carrier permits issued pursuant to Orders 72-4-149, 74-4-17, 73-3-33, 71-11-100, 75-5-58, respectively, authorizing them to perform scheduled passenger foreign air transportation, inter alia, on certain routes. The routes authorized are those permitted to be operated by British air carriers designated by the United Kingdom in accordance with the Agreement between the United States of America and the United Kingdom of Great Britain and Northern Ireland relating to the operation of scheduled international air transport services effective February 11, 1946, as amended. National Airlines, Inc. (National), Pan American World Airways, Inc. (Pan Am), and Trans World Airlines, Inc. (TWA) are the holders of certificates of public convenience and necessity issued pursuant to Orders 69-7-90 (NAL), 74-6-11 (PAA) and E-23230 (TWA), respectively, to engage in scheduled passenger foreign air transportation between, inter alia, the United States and Great Britain.

The Government of the United Kingdom delivered a Note on August 12, 1976 to the United States Department of State setting out the frequency levels and equipment types which the United Kingdom Government will permit U.S. carriers to operate on scheduled services between the United Kingdom and the United States from November 1, 1976 through April 23, 1977. The Note was delivered over the objections of the United States Government and representations made by the U.S. delegation at consultations with the United Kingdom Government, in

*Order 76-9-74 of the Civil Aeronautics Board
Adopted September 14, 1976*

July 1976, that such action would be regarded as a violation of the Air Transport Services Agreement. The effect of this unilateral action of the United Kingdom Government, if implemented, would be to unjustifiably reduce the number of frequencies planned to be operated during this period by National and TWA from Miami and Chicago, respectively, to London; to deprive all the U.S. carriers of their rights to determine their schedules in accordance with the provisions of the Agreement and to divert traffic which otherwise would be carried by U.S. carriers to British Airways.

Part 213 of the Board's Economic Regulations was promulgated specifically to provide the Board with appropriate powers to ensure that the operating rights provided for in an air transport agreement of any U.S. carrier designated thereunder remain unimpaired.

Upon consideration of these matters, the Board finds that the Government of the United Kingdom has taken action which, over the objections of the United States Government, will impair, limit, terminate, and deny operating rights and deny the fair and equal opportunity of U.S. carriers to exercise the operating rights provided for in the United States-United Kingdom Air Transport Services Agreement.

The Board further finds that in the present circumstances the public interest requires the Board to exercise its powers pursuant to Part 213 of the Economic Regulations, as amended, to require the filing of existing British air carrier schedules, and those which may later be proposed, to determine whether the operation of such services, or any part thereof, may be contrary to applicable law or may adversely affect the public interest.

ACCORDINGLY, IT IS ORDERED:

1. That Air BVI Limited, British Airways Board, British Caledonian Airways Limited, Cayman Airways Limited and LIAT (1974) Limited, file with the Civil Aeronautics Board (Attention: Director, Bureau of International Affairs) within seven days after service of this order an original and three copies of any and all of their existing schedules of service between the United Kingdom, its territories and possessions, and the United States, including scheduled services via intermediate points and to points beyond the United States, which shall include:

- (a) The type of equipment used (including the number of seats, by class of service, on aircraft normally assigned, by flight);
- (b) The times of arrival and departure at each point; and
- (c) The frequency and day(s) of operation of each flight;

*Order 76-9-74 of the Civil Aeronautics Board
Adopted September 14, 1976*

2. That the above-named foreign air carriers shall file with the Civil Aeronautics Board (Attention: Director, Bureau of International Affairs) an original and three copies of any and all proposed schedules of service between the United Kingdom, its territories and possessions, and the United States, including the information noted in ordering paragraph 1 above, the proposed effective date of such schedules, and the proposed termination date of such schedules (if determined), at least 30 days prior to inauguration of service; and

3. That this order shall be served on Air BVI Limited, British Airways Board, British Caledonian Airways Limited, Cayman Airways Limited and LIAT (1974) Limited, and the Ambassador of the United Kingdom of Great Britain and Northern Ireland in Washington.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)

A G

PETITIONER'S MOTION FOR A STAY OF ORDER 76-9-74
BEFORE THE CIVIL AERONAUTICS BOARD

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

-----X
In the Matter of the Schedules of :
AIR BVI LIMITED :
BRITISH AIRWAYS BOARD : Docket 29778
BRITISH CALEDONIAN AIRWAYS LIMITED :
CAYMAN AIRWAYS LIMITED :
LIAT (1974) LIMITED :
-----X

MOTION OF BRITISH AIRWAYS FOR STAY
OF ORDER 76-9-74

Communications with respect to
this document should be sent to:

WILLIAM C. CLARKE
Counsel for the USA

British Airways
245 Park Avenue
New York, New York 10017

Dated: September 27, 1976
New York, New York

*Petitioner's Motion for a Stay of Order 76-9-74
Before the Civil Aeronautics Board*

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

----- x
In the matter of the Schedules of :
AIR BVI LIMITED :
BRITISH AIRWAYS BOARD : Docket 29778
BRITISH CALEDONIAN AIRWAYS LIMITED :
CAYMAN AIRWAYS LIMITED :
LIAT (1974) LIMITED :
----- x

MOTION OF BRITISH AIRWAYS FOR STAY
OF ORDER 76-9-74

British Airways respectfully submits this motion
for a stay of Order 76-9-74, served September 17, 1976,
pending judicial review, and in support thereof states as
follows:

I.

On September 17, 1976, the Board served upon British
Airways Order 76-9-74, adopted under Section 213.3(c) of the
Board's Economic Regulations, requiring British Airways and
other United Kingdom carriers to file with the Board within

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Before the Civil Aeronautics Board*

seven days,

" ... all of their existing schedules of service between the United Kingdom, its territories and possessions, and the United States, including scheduled services via intermediate points and to points beyond the United States, which shall include:

- (a) The type of equipment used (including the number of seats, by class of service, on aircraft normally assigned, by flight);
- (b) The times of arrival and departure at each point; and
- (c) The frequency and day(s) of operation of each flight."

The order further requires the filing of,

" ... all proposed schedules of service between the United Kingdom, its territories and possessions, and the United States, including the information noted in ordering paragraph 1 above, the proposed termination date of such schedules and the proposed termination date of such schedules (if determined) at least 30 days prior to inauguration of service."

As provided in Section 213.3(c), the order was adopted and served without prior notice to British Airways and without giving it an opportunity to be heard. Also, Section 213.3(e) forbids the filing of any petition for reconsideration of the order.

The order contains no expiration date and, therefore, appears to be of indefinite duration.

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II.

Order 76-9-74 works immediate and irreparable injury upon British Airways, its property, its license rights and its business, as well as upon members of the travelling public in several respects.

Insofar as the order prohibits the inauguration of any new service without at least 30 days advance filing with the Board, it has at least the following immediate injurious effects:

(1) It appears to prohibit for at least 30 days the introduction of planned new services. For example, British Airways has had in its operating plan for some months the introduction of a third weekly frequency with Concorde aircraft on its London-Washington route on October 5. This new service has been open for sale in British Airways' reservations computer for some time and seats have been reserved and sold for flights for 45 weeks from and after October 5. A number of flights, including the initial ones in both directions, are fully booked. Inability to introduce this service as planned will cause substantial loss of

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revenue to British Airways, great inconvenience to the passengers booked thereon, injury to British Airways' reputation in the marketplace, and enormous costs in idling a \$60 million aircraft and specially trained crews for which there is no alternative utilization at this time.

(2) It appears to prohibit short-notice alteration of schedules and routings to accommodate such things as flight cancellations, equipment malfunctions, weather delays, labor difficulties and the like.

For example, British Airways not infrequently uses the flexibility provided by the coterminal authority in its permit to reroute flights, such as routing its Chicago-London service over New York to pick up traffic affected by delay or cancellation of a New York-London flight. Similarly, during the labor unrest which seems frequently to affect Canadian Air Traffic Control, British Airways mounts substantial additional schedules on short-notice into United States points named in its permit, primarily to accommodate traffic to and from Canada.

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(3) It appears to prohibit the operation of extra sections of flights to accommodate peak traffic requirements unless scheduled at least 30 days in advance. There are recurring requirements for extra sections to meet the public's requirements for transportation at such times as the coming Thanksgiving and Christmas holidays, as well as at other times. The scheduling of such flights is dependent upon actual reservations demand as it comes in and cannot normally be undertaken 30 days in advance. The inability to schedule extra sections will cause British Airways to lose substantial revenues or expose it to substantial unnecessary costs should it elect to schedule them 30 days in advance. Additionally it will place British Airways at a competitive disadvantage vis-a-vis the U.S.-flag and third-country carriers operating on its routes who are subject to no such constraints, and may at certain peak times result in denial of needed service to the travelling public.

(4) It appears to prohibit changes in equipment type not scheduled at least 30 days in

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advance. This imposes an arbitrary time delay factor upon British Airways' ability to match equipment changes of its competitors, to increase or reduce capacity in response to demand and to make adjustments in its schedule that are inevitably required in striving to operate its fleet of some 172 jet aircraft to over 200 cities around the world on an economically and mechanically sound basis. These disabilities will cause British Airways to lose substantial revenues or incur substantial unnecessary costs.

(5) It appears to impose a requirement to identify at least 30 days in advance the number of seats, by class of service, on aircraft normally assigned, to each flight. Thus, in addition to not being able to change equipment type on short-notice, British Airways will not be able to substitute equipment of the same type but having a different seating configuration. Since British Airways operates several configurations for most aircraft types in its multiple weekly services to nine U.S. cities (as shown by its configuration tariffs on file with the Board), this is a burdensome and costly requirement.

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(6) It appears to prohibit alteration of the arrival and departure times scheduled for any flight except upon 30 days advance notice. Such changes can be required on less than 30 days' notice for any of a host of reasons that affect the operation of a worldwide scheduled airline. A few examples are the necessity to reroute flights around areas where air traffic control is affected by labor difficulties, rerouting around areas of hostilities, adjusting to schedule changes of a competitor, imposition of a curfew at an airport or assignment of airport landing "slots." These changes may take place anywhere in the world and affect the time of all services utilizing the affected aircraft. It may well be impossible to comply with Order 76-9-74 in this respect and, in any event, will impose unnecessary cost burdens and competitive disadvantages.

Insofar as Order 76-9-74 places British Airways in imminent jeopardy of a further order, without notice or hearing, to restrict or cancel altogether its existing services, or prevent the inauguration of new services,

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it has further immediate injurious effects. This "Sword of Damocles" must inevitably have adverse effects upon British Airways' ability to compete in the marketplace against carriers not so threatened and, therefore, upon its revenues. The Board is quite familiar with the shifting of traffic by passengers, shippers, agents and tour operators away from a carrier whose services are threatened by a strike. In the highly competitive North Atlantic market at a time of general overcapacity in the coming Winter season there is no reason to suspect British Airways will escape similar effects. Additionally, the Board should be aware that the absence of any proceedings that are likely to have a substantial adverse affect upon a carrier's business is frequently if not normally a condition of financing arrangements for equipment or otherwise. Order 76-9-74 subjects British Airways to such a proceeding and may, therefore, close to it normal sources of financing, especially in the United States where the bulk of its aircraft are purchased.

III.

Order 76-9-74 is a judicially reviewable order under Section 1006(a) of the Act. It meets the test of administrative finality established in Chicago and Southern Air Lines v. Waterman Steamship Corp., 333 U.S. 103 (1948), in that --

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(a) it clearly imposes obligations, denies rights and fixes a legal relationship as a consummation of the administrative process; and

(b) it is not merely a recommendation subject to Presidential review under Section 801.

The Board's order imposes very burdensome obligations upon British Airways, previously discussed, requiring it to file schedules with the Board and prohibiting it from altering frequency, days of operation, arrival and departure times, the type of equipment used for a flight, or the number of seats by class of service on aircraft normally assigned to each flight, except upon at least 30 days' advance notice. In this the order denies British Airways the right, which it and its predecessor corporations have enjoyed under their foreign air carrier permits for over 35 years, to alter its schedules as the requirements of competition, the demand for service or the safe and economical operation of its aircraft fleet may warrant. In addition, the order fixes a legal relationship in that it places British Airways, alone among all carriers operating on its routes, under a legal liability of having its schedules reviewed by the Board with a view to restricting or cancelling them at any

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time without notice or hearing.

British Airways is aware, of course, that in one previous case the Board indicated the view, ^{1/} and the Court of Appeals for the District of Columbia subsequently held, ^{2/} that a schedule filing order under Part 213.3(c) was interlocutory and non-reviewable since it was merely a predicate to further action to actually restrict or curtail schedules under Section 213.3(d). However, it appears that the immediate and irreparable impacts of the so-called schedule filing order itself which British Airways has demonstrated herein, either were not present or were not advanced in that case. Thus, in its Order 74-11-150 (mimeo p. 2) the Board was able to say,

"... there is no showing of any adverse effect which would flow to KLM from the requirement that its schedules be filed, or any basis for assuming that compliance with the order will have any effect whatsoever on KLM's operations to and from the United States."

Possibly KLM as a smaller carrier with a smaller fleet, less routes serving the United States, and fewer equipment types and configurations used on those routes did not face the same consequences from the order served upon it as British

^{1/} KLM Royal Dutch Airlines, Order 74-11-150, November 27, 1974.

^{2/} KLM Royal Dutch Airlines v. C.A.B., No. 74-2065, order filed March 18, 1975.

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Airways has demonstrated herein. Possibly that carrier did not have either the capability or the necessity to operate extra sections of flights on short-notice that British Airways has. Certainly it appears KLM was not faced with any consequences so dire and imminent as cancellation or postponement of proposed new service with Concorde aircraft after it has been sold to the public.

In any event, we submit that in this case British Airways has clearly demonstrated that Order 76-9-74 itself, regardless of whether it is later used as a predicate for some action under Section 213.3(d), works very immediate and irreparable injury, imposes real obligations, denies rights and fixes a legal relationship. And as to those matters it represents the "consumation of the administrative process." By its terms the order is a final order of indefinite duration, not subject to reconsideration. Part 213 procedures do not oblige the Board at any time ever to take any further action in relation to this order and the Board may well never do so. Moreover, even if the Board should at some future time take further action to restrict or cancel schedules under Section 213.3(d), there is nothing in that procedure which offers any possibility of review or reconsideration of the burdens imposed by Order 76-9-74 which,

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by their terms, continue indefinitely. Accordingly, we submit that Order 76-9-74 is in every sense a final order of the Board which is reviewable under Section 1006(a).

IV.

There are substantial issues as to the legality of Order 76-9-74 that warrant the issuance of a stay pending judicial review.

A. The Board's Findings Do Not Satisfy the Requirements of Part 213.3(c) and Are Otherwise Insufficient.

In adopting Order 76-9-74 the Board found that,

"... the Government of the United Kingdom has taken action which, over the objections of the United States Government, will impair, limit, terminate, and deny operating rights and deny the fair and equal opportunity of U.S. carriers to exercise the operating rights provided for in the United States-United Kingdom Air Transport Services Agreement."

The Board further found that,

"The effect of this unilateral action of the United Kingdom Government, if implemented, would be to unjustifiably reduce the number of frequencies planned to be operated during this period by National and TWA from Miami and Chicago, respectively, to London; to deprive all the U.S. carriers of their rights to determine schedules in accordance with the provisions of the Agreement and to divert traffic which otherwise would be carried by U.S. carriers to British Airways."

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Finally, the Board found that,

"... in the present circumstances the public interest requires the Board to exercise its powers pursuant to Part 213 ..."

The Board's findings in Order 76-9-74 are on their face insufficient under the standard established in Part 213.5(c) pursuant to which the order was adopted. Part 213.3(c) requires a finding that the government or aeronautical authorities of the foreign carrier's country,

"... have: (1) Taken action which impairs, limits, terminates, or denies operating rights, or (2) otherwise denied or failed to prevent the denial of, in whole or in part, the fair and equal opportunity to exercise the operating rights."

As can readily be seen, Section 213.3(c) requires a finding that action has been taken by a foreign government that is impairing operating rights, or that the foreign government has denied or has failed to prevent the denial of a fair and equal opportunity. On the other hand, the Board's findings in Order 76-9-74 speak to action by the U.K. Government that will, if implemented, have such effects. Section 213.3(c), as approved by the President, purports to authorize retaliatory action for injuries in being and

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not the anticipatory action the Board has taken in Order 76-9-74. 3/

Insofar as British Airways is aware, the United Kingdom Government has as yet taken no action that is limiting the operations of any U.S. carrier. As we understand the matter, the U.K. Government has given notice that it will implement unilateral measures to reduce what it regards to be excess capacity by the carriers of both countries if the two governments are unable to agree on joint measures. British Airways understands that consultations between the two governments are still taking place and that an agreed solution is still possible. Accordingly, under the terms of Section 213.3(c), the issuance of Order 76-9-74 was not authorized.

The findings in Order 76-9-74 are insufficient in other respects as well. For example, no reviewing court could determine from the order whether there is any rational basis for the Board's conclusion that the proposed actions of the U.K. Government to reduce excess capacity on the

3/ While the language of the regulation itself is clear, it may be noted that in approving Part 213 President Nixon specifically stated, "The intention of the Board to use these powers sparingly and only after other nations have taken unwarranted restrictive action against United States carriers is consistent with our international aviation policy." July 3, 1970. Letter of Presidential Approval attached to Order 70-6-33.

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North Atlantic "will impair, limit, terminate, and deny operating rights and deny the fair and equal opportunity to exercise the operating rights provided for" in the Bermuda Agreement. The order contains no mention of, much less any reasoned analysis of the bases in international law asserted by the U.K. Government for its position. Moreover, the Board would seem hard pressed to distinguish the actions the U.K. Government has proposed to take from the actions the Board itself has asserted the right to take under Part 213 in relation to Bermuda-type bilaterals.

From the earliest inception of Part 213 in the Foreign Air Carrier Permit Terms Investigation the Board has asserted the right to invoke Part 213 restrictions unilaterally when a foreign country's carriers are operating excessive capacity and consultations with the foreign government under a Bermuda-type bilateral failed to resolve the problem (34 CAB 840, 844). The Board has applied this interpretation in acting against KLM under Part 213 under a bilateral that is materially indistinguishable from the Bermuda Agreement (Order 74-11-83, November 19, 1974). We see nothing to distinguish the proposed unilateral actions of the U.K. Government against what it finds to be excessive capacity by U.S.-flag carriers, after full consultations under the bilateral have not resolved the problem, from the

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Board's own action under Part 213 which it has found to be consistent with bilateral obligations.

The Board's factual finding in Order 76-9-74 that the U.K. Government's actions will divert traffic from U.S.-flag carriers to British Airways is not supported by "substantial evidence" as required by Section 1006(e) of the Act. Pillai v. C.A.B., 485 F. 2d 1018 (D.C. Cir. 1973). Indeed no basis at all for the finding is apparent from the order. Possibly the Board is not aware that the actions the U.K. Government proposes to take to alleviate excessive capacity will fall upon British Airways with the same force as upon U.S.-flag carriers. The British Government has proposed no discriminations such as Order 76-9-74 would create.

As noted by the Court of Appeals in the Pillai case:

" 'Substantial evidence' is the requirement, no matter how esoteric are the facts to be considered in support of the CAB decision on the issue. The Board cannot wrap its decision in some mystique of foreign policy or purported expertise in international negotiation to achieve a nonreviewable status for the facts underlying its most important and most sensitive decisions." (485 F. 2d at 1023).

Order 76-9-74 does not meet this standard.

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B. Due Process -- Denial of Notice and Opportunity to Be Heard. It is apparent from the preceeding discussion that Order 76-9-74 deprives British Airways of substantial license and other property rights without advance notice or any opportunity to be heard. Such action by an agency of the United States Government is prohibited by the Fifth Amendment to the Federal Constitution. Morgan v. U.S., 304 U.S. 1 (1937); Ashbacker Radio Corp. v. F.C.C., 326 U.S. 327 (1945); Southern Ry. Co. v. Virginia ex rel. Shirley, 290 U.S. 190 (1933).

The fact that the order is entered pursuant to Part 213, purportedly inserted into the permits of British Airways and other carriers in the Foreign Air Carrier Permit Terms Investigation, Order 70-6-32, approved by the President June 3, 1970, does not alter this conclusion. Neither the Board nor the President acting under Section 801 of the Act is empowered to disregard the minimal requirements of constitutional due process. British Airways and its predecessor corporation have at all times vigorously contested the purported Part 213 permit amendment by all lawful means (see, e.g., British Overseas Airways Corporation v. C.A.B., 304 F. 2d 952 (D.C. Cir. 1962)) and British Airways has never waived its due process rights.

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Equally, it is of no import in terms of constitutional due process that British Airways is a foreign air carrier rather than a citizen carrier or that the Board's order purports to be a form of retaliation against alleged actions of the British Government to which the U.S. Government may object:

"The 5th Amendment gives to each owner of property his individual right. The constitutional right of owner A to compensation when his property is taken is irrespective of what may be done somewhere else with the property of owner B. As alien friends are embraced within the terms of the 5th Amendment, it cannot be said that their property is subject to confiscation here because the property of our citizens may be confiscated in the alien's country. The provision that private property shall not be taken without just compensation establishes a standard of conduct for our government which the Constitution does not make dependent upon the standards of other governments." Russian Volunteer Fleet v. U.S., 383 U.S. 481, 491-492 (1931).

C. C. The Order Is Contrary To Sections 402 and 801 of the Act and the Board Is Therefore Without Jurisdiction.
Order 76-9-74 effects a modification of the terms, conditions and limitations of British Airways' foreign air carrier permits. Specifically, it conditions the right enjoyed by British Airways to engage in the "foreign air transportation" authorized by its permits in the respects described in sections II and III, supra. Section 402(f) of the Act empowers the Board to alter, modify, amend, suspend, cancel

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Before the Civil Aeronautics Board*

or revoke a permit only after notice and hearing, and Section 801 requires the prior approval of the President for any such action. Neither of these statutory conditions has been met and the Board is, therefore, without jurisdiction to issue the order.

We recognize, of course, that Part 213 has been approved by the President and that by Order 70-6-32, also approved by the President, the regulation in its original form was purportedly made part of the terms, conditions and limitations of foreign air carrier permits such as those held by British Airways. By these actions it would seem that the President has attempted to delegate to the Board plenary authority to amend the terms of foreign air carrier permits without seeking his specific approval which Congress has required in Section 801. Additionally, it appears that the Board and President together have attempted to establish procedures for the amendment of foreign air carrier permits in Part 213 that bypass the notice and hearing requirements expressly required by Congress in Section 402(f). These actions, while seemingly unlawful on their face, have so far escaped judicial scrutiny because the courts have felt they lacked jurisdiction to review actions of the President in the foreign policy field. See, British Overseas Airways Corporation v. C.A.B., supra. Compare, however,

*Petitioner's Motion for a Stay of Order 76-9-74
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American Airlines v. C.A.B., 348 F. 2d 349 (D.C. Cir. 1965), and Pan American World Airways v. C.A.B., 3380 F. 2d 770 (2d Cir. 1971), aff'd by an equally divided Court 391 U.S. 461.

Order 76-9-74 is, however, a product of the Board acting alone and does not embody any presidential discretion. The Board is a creature of statute which may itself perform only those functions authorized by statute and in the manner prescribed by statute. There is absolutely no statutory authority for the Board's action in issuing Order 76-9-74.

D. The Order Is Contrary to the Bermuda Agreement and Section 1102 of the Act and the Board Is Therefore Without Jurisdiction. As demonstrated in sections II and III, supra, Order 76-9-74 places British Airways at a severe competitive disadvantage vis-a-vis its U.S.-flag competitors in several respects. Even if the U.K. Government implements the capacity reduction measures it has proposed (which fall upon British Airways as well as U.S.-flag carriers) the Board's order would still place British Airways at a competitive disadvantage regarding the flexibility to change seating configurations, days of operation and arrival and departure times on less than 30 days notice. In this respect the order is contrary to the "fair and equal opportunity" provision of the Bermuda Agreement.

*Petitioner's Motion for a Stay of Order 76-9-74
Before the Civil Aeronautics Board*

Section 1102 of the Act clearly mandates that the Board shall act consistently with any obligation assumed by the United States in an international agreement. It might be argued that the Board, when acting as adviser to the President in the exercise of his powers under Section 801, could recommend to him an action at variance with an international agreement for reasons of retaliation or otherwise. ^{4/} But the Board's own actions must be consistent with international agreements of the U.S. Order 76-9-74, as previously discussed, is not a recommendation to the President and must, therefore, comply in all respects with the limitations that Congress has placed upon the Board's powers, including those of Section 1102.

V.

British Airways would prefer to give the Board the opportunity to reconsider or at least clarify Order 76-9-74 in light of the matters raised herein before seeking judicial review. However, in view of the prohibition in Section 213.3(e) against petitions for reconsideration of

^{4/} See, British Overseas Airways Corporation, Permit, 29 CAB 583 (1959).

*Petitioner's Motion for a Stay of Order 76-9-74
Before the Civil Aeronautics Board*

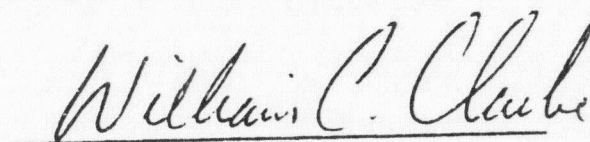
the order, British Airways has felt that it has no alternative to the present motion, particularly in view of the imminent impact upon its new Concorde service planned to commence October 5. We invite the Board to reconsider the order and would delay judicial proceedings pending such reconsideration, provided a stay were granted in the interim. However, in view of the imminent consequences for British Airways' new Concorde service, the substantial penalties that could accrue for noncompliance from and after September 28 if the order is not stayed, and the other immediate injuries the order would work as described in section II, supra, British Airways will be compelled to seek appropriate judicial review and a judicial stay not later than the afternoon of September 30 if relief consistent with the premises of this motion is not forthcoming by then.

WHEREFORE, British Airways respectfully urges the Board to stay the effectiveness of Order 76-9-74 pending judicial review thereof and to grant such other and further relief consistent with the premises hereof as the Board

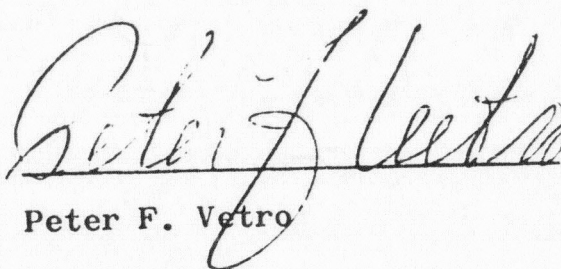
*Petitioner's Motion for a Stay of Order 76-9-74
Before the Civil Aeronautics Board*

shall deem just and proper.

Respectfully submitted,

A handwritten signature in cursive script, reading "William C. Clarke", written over a horizontal line.

William C. Clarke

A handwritten signature in cursive script, reading "Peter F. Vetro", written over a horizontal line.

Peter F. Vetro

Attorneys for
British Airways

Dated: September 27, 1976
New York, New York

UNNUMBERED ORDER OF THE CIVIL AERONAUTICS BOARD
ADOPTED SEPTEMBER 29, 1976

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its offices in Washington, D.C.
on the 29th day of September, 1976

In the matter of the schedules of :

BRITISH AIRWAYS BOARD :

Docket 29778

ORDER TO REDUCE SCHEDULES

By Order 76-9-74 dated September 14, 1976, the Board directed, pursuant to section 213.3(c) of its Economic Regulations, that British Airways Board (a United Kingdom designated scheduled air carrier under the bilateral Air Transport Services Agreement in effect between the United States and the United Kingdom), among others, file with the Board its existing and proposed schedules of service between the United Kingdom and the United States. The Board noted that, over the objections of the United States Government, the United Kingdom authorities on August 12, 1976, unilaterally and unjustifiably set maximum limits on the frequency level and capacity of U.S. air carriers to be operated from November 1, 1976, through April 23, 1977, thereby impairing, limiting, terminating, and denying their operating rights and their fair and equal opportunity to exercise such operating rights provided for in the U.S.-U.K. Air Transport Services Agreement. The United States Government had advised the United Kingdom that this action is a serious violation of the Agreement.

As a result of the United Kingdom action, U.S. carrier schedules are unilaterally predetermined and restricted, while the United Kingdom Government remains free to permit its government-owned carrier to operate those schedules which best meet British Airway's needs and potentially to divert significant traffic from U.S. carrier-services to British Airways. The United States Government has advised the United Kingdom that this Government will not tolerate such unilateral action, and that the failure to withdraw such action will require an appropriate retaliatory response. Despite these representations the United Kingdom Government has refused to withdraw these schedule limitations.

*Unnumbered Order of the Civil Aeronautics Board
Adopted September 29, 1976*

Considering the United Kingdom violation of the terms of the Agreement, by unilaterally restricting the operations of the designated U.S. air carriers, the Board finds, pursuant to section 213.3 of its Economic Regulations and in accordance with the representations made by the United States Government in the course of consultations with the United Kingdom Government:

- (1) That the United Kingdom Government, by limiting the schedules of U.S. designated air carriers, have impaired, limited, terminated, and denied these air carriers operating rights under the U.S.-U.K. Air Transport Services Agreement and have denied the fair and equal opportunity for these U.S. carriers to exercise such operating rights;
- (2) That a limitation upon the schedules to be operated by British Airways Board from November , 1976, is required in the public interest; and
- (3) That operation of schedules by British Airways Board between Los Angeles and London in excess of those set forth below may adversely affect the public interest.

The currently effective passenger schedules of British Airways (effective to March 19, 1976) as reflected in the British Airways airline schedules, printed in the worldwide edition of the Official Airline Guide, 1/ show the following frequencies of scheduled operations of the carrier between Los Angeles and London:

Daily DC-10 service between Los Angeles and London.

The Board finds that a reduction of British Airways' schedules to five weekly round-trip DC-10 services between Los Angeles and London is at this time the appropriate response to the United Kingdom's unilateral restrictions on U.S. carriers serving the U.K. for the winter season.

ACCORDINGLY, IT IS ORDERED THAT:

1. Within 30 days after service of this order, British Airways Board shall not operate, nor hold out to the public in any manner, that it does operate scheduled passenger service frequencies (including extra sections) between Los Angeles and the United Kingdom in excess of five weekly DC-10 frequencies between Los Angeles and London;

1/ Although British Airways has failed to comply with the Board's direction to file schedules in Order 76-9-74, obviously this failure can have no effect upon the Board's and the United States Government's ability to act under Part 213 in accordance with the Presidentially approved condition on British Airways' permit rights. The primary reason for the two-step Part 213 procedure was to provide an additional opportunity after the preliminary action for the respective Governments to negotiate a resolution of their outstanding problems.

*Unnumbered Order of the Civil Aeronautics Board
Adopted September 29, 1976*

2. British Airways Board's schedules of service from November , 1976, between the United States and the United Kingdom be and they hereby are disapproved, to the extent they exceed, in scheduled passenger service, the frequencies set forth in paragraph 1;

3. This order shall be submitted to the President and shall become effective on ;2/

4. This order shall remain in effect until further order of the Board; and

5. This order shall be served on British Airways Board and the Ambassador of the United Kingdom and Northern Ireland in Washington, D.C.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)

ORDER 76-9-161 OF THE CIVIL AERONAUTICS BOARD
ADOPTED SEPTEMBER 30, 1976

Order 76-9-161



UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 30th day of September, 1976

In the matter of the Schedules of

AIR BVI LIMITED

BRITISH AIRWAYS BOARD

BRITISH CALEDONIAN AIRWAYS LIMITED

CAYMAN AIRWAYS LIMITED

LIAT (1974) LIMITED

Docket 29778

ORDER ON MOTION FOR STAY

By Order 76-9-74 the Board directed, pursuant to section 213.3(c) of its Economic Regulations, ^{1/} that British Airways (the United Kingdom government-owned scheduled air carrier designated, and providing transatlantic service, under the Bilateral Air Transport Agreement in effect between the United States and the United Kingdom), among other British scheduled carriers, file with the Board its existing and proposed schedules of service between the United Kingdom and the United States. The Board noted that, over the objections of the United States Government, the United Kingdom authorities on August 12, 1976, unilaterally and unjustifiably set maximum limits on the frequency level and capacity of United States air carriers to be operated from November 1, 1976, through April 23, 1977, thereby impairing, limiting, terminating, and denying their operating rights, and their fair and equal opportunity to exercise such operating rights, provided for in the United States-United Kingdom Air Transport Services Agreement. The United States Government had advised the United Kingdom Government that this action constituted a serious violation of the Agreement. Accordingly, the Board found, that the public interest "requires the Board to exercise its powers pursuant to Part 213 of the Economic Regulations, as amended, to require the filing of existing British air carrier schedules, and those which may later be proposed, to determine whether the operation of such services, or

^{1/} Part 213 was adopted, after extensive hearings, by Order 70-6-32, approved by the President of the United States on June 3, 1970. Pursuant to Presidential directive, the Regulation became immediately effective on its date of service, June 4, 1970.

*Order 76-9-161 of the Civil Aeronautics Board
Adopted September 30, 1976*

any part thereof, may be contrary to applicable law or may adversely affect the public interest."

By motion filed September 27, 1976, British Airways requests that the Board stay the effectiveness of its Order 76-9-74 pending judicial review thereof, and for other appropriate relief. In support of its motion, British Airways alleges that the order creates immediate injury to it in that it could be construed to preclude the inauguration on October 5, 1976, of a proposed additional Concorde schedule at Washington (a period of less than 30 days from the filing date), and to limit the carrier's ability to operate in the same manner as authorized prior to the effectiveness of the order. In addition, it is urged that the mere threat of a second stage Part 213 action disapproving schedules, subject to Presidential stay or disapproval, creates further injurious effects. Thus British Airways alleges that the order is reviewable as a final order imposing obligations, denying rights and fixing a legal relationship as a consummation of the administrative process. It is further alleged that there are substantial issues as to the legality of Order 76-9-74 that warrant the issuance of a stay pending judicial review. In this connection, British Airways alleges that the Board's findings are insufficient, inter alia, in that they do not meet the requirements of section 213.3(c); that the order constitutes a denial of due process; and that the order is contrary to Sections 402, 801, and 1102 of the Act as well as the Air Transport Services Agreement between the United States and the United Kingdom.

We have carefully considered the arguments of British Airways, and have concluded that the stay should be denied, except in one respect. In order to remove the British Airways concerns over the effect of the Board's Order 76-9-74 on passengers already booked on the inaugural service of British Airways' proposed Concorde frequency on October 5, the Board will stay the effectiveness, through October 6, 1976, of the Board's Order 76-9-74, only insofar as that order would otherwise require the filing on September 28, of the third Concorde frequency to Washington. The third Concorde frequency may then be filed as an "existing" schedule on October 6. Our limited stay of the order should not, however, be construed as any restriction upon Board action in the future, pursuant to section 213.3(d), to disapprove, subject to Presidential stay or disapproval, any Concorde or other schedule which the Board finds may be adverse to the public interest.

In all other respects, the motion for stay will be denied. Despite the arguments of British Airways, the Board finds no significant adverse impact arising from the order directing the filing of British Airways existing

*Order 76-9-161 of the Civil Aeronautics Board
Adopted September 30, 1976*

schedules by September 28, 1976, and its proposed schedules 30 days in advance of inauguration. The order merely requires, pursuant to the Presidential approval procedures of Part 213, that British Airways' schedules be filed with the Board in order that the Board may consider whether such schedules may in fact be "contrary to applicable law or may adversely affect the public interest." Adverse impact upon British Airways will result only from a subsequent order (subject to stay or disapproval by the President) actually disapproving such schedules. The order would not, as speculated, preclude true emergency changes concerning rerouting or changes in equipment type and the like. It does not purport to constitute a preclusion against emergency deviations as a result of unanticipated operational requirements. The Board order is in every respect an interlocutory order which would not be subject to judicial review. 2/ Accordingly, there is no basis for grant of the requested stay. Indeed, in KLM Royal Dutch Airlines v. C.A.B., No. 74-2065, Order filed March 18, 1975, the Court of Appeals for the District of Columbia dismissed for lack of jurisdiction an appeal from a virtually identical order against KLM, finding that the order for which review was sought was not final.

It further may be observed that, even to the extent there may be some adverse impact upon British Airways resulting from the order, that adverse impact is one to which British Airways' operating rights are specifically subject. Part 213 was adopted, after full hearings and Presidential approval, as a permit amendment proceeding in which British Airways' permit was made subject to the provisions of that Part. 3/ Thus, the Part 213 procedures

2/ There is no right to review of an interlocutory order and no jurisdiction to be protected by a stay. See, Fed. Power Comm. v. Edison Co., 304 U.S. 375, 383 (1938).

3/ Insofar as it is argued that the order is contrary to Sections 402, 801 and 1102 of the Act, and the provisions of the Air Transport Services Agreement between the United States and the United Kingdom, these arguments are, for the most part, identical to those made by the British carrier in the original Part 213 proceedings. The arguments were there rejected. The Board order adopting Part 213 was approved by the President and, as noted, made a condition to British Airways' permit. Such determinations cannot be collaterally attacked in the instant proceeding. See, Dan-Air Services v. C.A.B., 475 F.2d 408 (C.A.D.C., 1973).

*Order 76-9-161 of the Civil Aeronautics Board
Adopted September 30, 1976*

constitute a condition to British Airways' foreign air carrier permit. The implementation of such procedures, pursuant to that condition, 4/ can constitute no deprivation of rights of the carrier. See, Dan-Air Services, Ltd. v. C.A.B., 475 F.2d 408 (C.A.D.C., 1973).

Finally, the balance of equities clearly requires denial of the requested stay. The British Government has unilaterally taken action which substantially impairs the operating rights of United States carriers under the United States-United Kingdom bilateral, despite the repeated objections of the United States Government, and clear warnings that retaliatory action under Part 213 would follow. 5/ Under these circumstances, to stay the initial

4/ We find no validity to British Airways' argument that the section 213.3(c) procedures have not been complied with because the impairment to the operating rights of the United States carriers will not occur until the November 1 schedules, which have been restricted by the British Government, would otherwise be implemented. The British Government has advised the United States Government by Diplomatic Note that such restrictions will be imposed, and has similarly advised the United States carriers that they are precluded from operating schedules in excess of those limitations subsequent to November 1. Such British action clearly constitutes a present impairment of the United States carriers' operating rights. Part 213, which was adopted specifically as a means to provide prompt retaliatory action in order to deter and prevent foreign government restrictions, could not reasonably be construed as requiring that full damaging effects of the foreign governments' restrictive action had actually taken place before the U.S. Government was in a position to take the appropriate retaliatory action under the Part 213 procedures.

5/ The contention that the carrier has been denied an opportunity to express its views seems peculiarly inappropriate from a government-owned carrier which in fact participated in the intergovernmental negotiations where the respective views of the governments were debated at length, and the United States Government position that the British action was considered to constitute a serious violation of the Air Transport Services Agreement, and would, in the absence of withdrawal, be the subject of United States Government retaliatory action under Part 213 was clearly set forth. It may be noted, nevertheless, that in the event of adoption of a second stage order actually disapproving schedules, the carrier retains the right to apply pursuant to sections 213.3(e) and 213.5 of the regulations "for approval of any or all existing or proposed schedules". Thus the opportunity for the carrier to present its views is preserved.

*Order 76-9-161 of the Civil Aeronautics Board
Adopted September 30, 1976*

stage Part 213 order, which by itself is not final, but the stay of which could seriously impede United States Government retaliatory action designed to deter and remove the United Kingdom bilateral violations, becomes unthinkable, and clearly contrary to the public interest.

ACCORDINGLY, IT IS ORDERED:

1. That except to the extent granted in paragraphs 2 and 3 below solely with respect to the third Concorde frequency proposed to be inaugurated at Washington on October 5, the motion of British Airways for stay of Order 76-9-74, be and it hereby is denied;

2. That Order 76-9-74 be and it hereby is stayed, to the extent, but only to the extent, that it would otherwise require that British Airways file its proposed third Concorde frequency at Washington commencing October 5, 1976, on or before September 28, 1976; and

3. That on or before October 6, 1976, British Airways Board shall file as an "existing" schedule its currently proposed third Concorde frequency at Washington, provided such frequency has in fact been inaugurated on or prior to October 6, 1976. Such filing shall be in accordance with the procedures for the filing of existing schedules set forth in Order 76-9-74.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)

MINETTI AND WEST, MEMBERS, FILED THE ATTACHED CONCURRENCE AND DISSENT.

*Order 76-9-161 of the Civil Aeronautics Board
Adopted September 30, 1976*

MINETTI AND WEST, MEMBERS, CONCURRING AND DISSENTING:

We would deny the motions for stay in their entirety. We cannot join in this relaxation of the requirements imposed by the Board in Order 76-9-74, September 14, 1976. A reading of that order reveals that the Board unmistakably intended to distinguish between existing and proposed schedules. Thus, the first ordering paragraph of the order established certain reporting requirements relating to "existing schedules of service," while the second ordering paragraph set forth such requirements with respect to "proposed schedules of service. It is difficult to envision a clearer distinction than the one created in that order.

In its pleadings, British Airways informs us that "for some months" it has, pursuant to its "operating plan," intended to add a third weekly London-Washington Concorde frequency on October 5th (Motion of British Airways, at 3). That may be so, but that additional frequency did not exist on September 28th. Nothing short of alchemy can transform such an "operating plan" into an existing schedule.

The mandate of Order 76-9-74 is clear; we would carry it out.

/s/ G. JOSEPH MINETTI

/s/ LEE R. WEST

A 39

LETTER DATED OCTOBER 9, 1976 OF PRESIDENT GERALD R. FORD
ADDRESSED TO THE CHAIRMAN, CIVIL AERONAUTICS BOARD

THE WHITE HOUSE

WASHINGTON

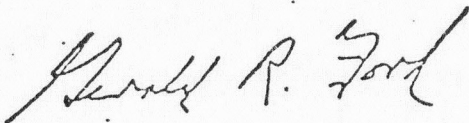
October 9, 1976

Dear Mr. Chairman:

I have reviewed the Board's proposed order in the matter of the schedules of British Airways Board (British Airways) in Docket 29778 and the circumstances surrounding that order. In view of the fact that the issues necessitating the actions proposed in the order have been satisfactorily resolved with the British authorities, I am hereby disapproving the order.

I have further determined that prompt rescission of the Board's order 76-9-74, which requires the carrier to file with the Board its existing and proposed schedules, would be appropriate and in the interests of our foreign policy.

Respectfully,



The Honorable John E. Robson
Chairman
Civil Aeronautics Board
Washington, D.C. 20428

PETITION FOR REVIEW OF ORDER 76-9-74
PURSUANT TO 49 USC §1486

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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BRITISH AIRWAYS BOARD,	:	Docket No.
Petitioner,	:	76-4226
-against-	:	Petition For
	:	Review of
CIVIL AERONAUTICS BOARD,	:	Agency Order
Respondent.	:	
-----	x	

British Airways Board hereby petitions the court for review, pursuant to Title 49 USC §1486 and Rule 15 of the Federal Rules of Appellate Procedure, of Order 76-9-74 adopted by the Civil Aeronautics Board on September 14, 1976, pursuant to §213.3(c) of the Board's Economic Regulations [14 CFR §213.3(c)] requiring Petitioner to file with the Board.

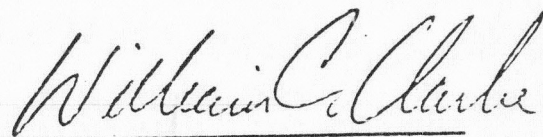
- (a) all proposed schedules of service between the United Kingdom, its territories and possessions, and the United States, the proposed effective date of such schedules and the proposed termination date of such schedules at least 30 days prior to inauguration of such service; and
- (b) all existing schedules of service between the United Kingdom, its territories and possessions, and the United States, including

*Petition for Review of Order 76-9-74
Pursuant to 49 USC §1486*

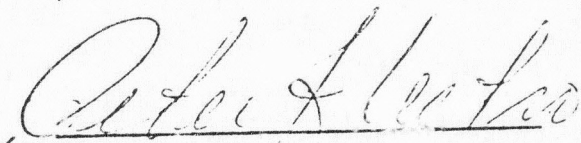
scheduled services via intermediate points and to points beyond the United States; and

- (c) with respect to each set of schedules the type of equipment used; the number of seats by class of service; the type of aircraft normally assigned by flight; the times of arrival and departure at each point; and the frequency and days of operation of each flight.

Dated: October 7, 1976
New York, New York



William C. Clarke



Peter F. Vetro

Attorneys for
British Airways Board
245 Park Avenue
New York, New York 10017
(212) 983-5352

PETITIONER'S NOTICE OF MOTION FOR STAY PENDING REVIEW

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED
10-21-76

-----x	:	
	:	
BRITISH AIRWAYS BOARD,	:	Docket No.
	:	
Petitioner,	:	76-4226
	:	
- against -	:	Notice of Motion
	:	for
CIVIL AERONAUTICS BOARD,	:	Stay Pending Review
	:	
Respondent.	:	
-----x	:	

SIR:

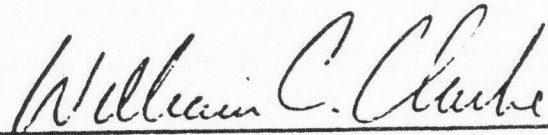
PLEASE TAKE NOTICE that upon Order 76-9-74 of the Civil Aeronautics Board dated September 14, 1976, the affidavit of R.D.H. Wilson sworn to on October 20, 1976, the annexed exhibits and upon all prior proceedings, the undersigned will move this Court at 10:30 a.m., or as soon thereafter as counsel may be heard, in Room 1701 at the Federal Courthouse located at Foley Square in the City, State and County of New York, on a date to be determined by the Clerk hereof, for an Order pursuant to Rule 18 of the Federal Rules of Appellate Procedure staying the implement-

Petitioner's Notice of Motion for Stay Pending Review

ation of Order 76-9-74 of the Civil Aeronautics Board pending its review by this Court.

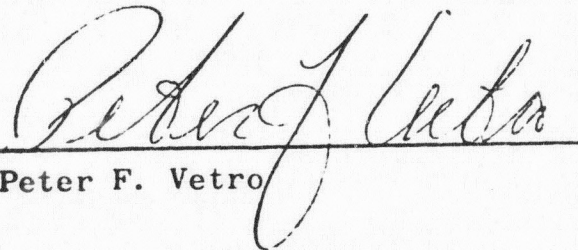
PLEASE TAKE FURTHER NOTICE that pursuant to Rule 27(a) of the Federal Rules of Appellate Procedure and §27 of the Rules of the United States Court of Appeals for the Second Circuit, petitioner shall request expedited consideration of this motion.

Yours etc.



William C. Clarke

Dated: October 20, 1976
New York, New York



Peter F. Vetro

Attorneys for
British Airways Board
245 Park Avenue
New York, New York 10017
(212) 983-5552

TO: James C. Schultz.Esq.
General Counsel
Civil Aeronautics Board
Washington, D.C. 20428
(202) 673-5235

AFFIDAVIT OF R.D.H. WILSON, SUBMITTED IN SUPPORT
OF PETITIONER'S MOTION

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- x

BRITISH AIRWAYS BOARD,	:	
	:	Petitioner, : Docket No.
-against-	:	Affidavit in Support
	:	of Motion for
CIVIL AERONAUTICS BOARD,	:	Stay Pending Review
	:	
	:	Respondent. :

----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.

R. D. H. WILSON, being duly sworn, deposes and
says:

1. I am the United States Manager for the petitioner, British Airways Board (hereinafter referred to as "British Airways") with offices at 245 Park Avenue, New York, New York, with general responsibility for the conduct of its business in this country. I am fully familiar with all the facts and proceedings heretofore had with respect to the instant application.

2. I submit this affidavit in support of the within motion seeking:

- (a) an order, pursuant to Rule 18 of the Federal Rules of Appellate Procedure, staying the implementation of Order 76-9-74 of the Civil Aeronautics Board (the "Board") pending review by this Court ^{1/};
- (b) expedited consideration of the instant motion pursuant to Rule 27(a) of the Federal Rules of Appellate Procedure and §27 of the Rules of the United States Court of Appeals for the Second Circuit.

3. British Airways is a public corporation of the United Kingdom of Great Britain and Northern Ireland, organized and existing under the United Kingdom Civil Aviation Act 1971. It is engaged in the transportation of persons, property and mail as a common carrier by air to over 200 cities in 80 countries around the world, including the United States. It is a "foreign air carrier" within the meaning of Section 101(19) of the Federal Aviation Act of 1958, as amended (hereinafter referred to as the "Act"), 49 U.S.C. §1301(19), and holds two foreign air carrier permits issued by the Board under Section 402 of the Act, 49 U.S.C. §1461. Pursuant to such permits,

^{1/}A petition for review of Order 76-9-74 pursuant to Title 49 U.S.C. §1486 and Rule 15 of the Federal Rules of Appellate Procedure, has been filed with the Court.

British Airways and its corporate predecessor, British Overseas Airways Corporation, have provided scheduled international air services to various cities in the United States for more than 35 years.

4. British Airways maintains its U.S. executive offices at 245 Park Avenue in the City, County and State of New York, from which the activities of its regional, district, and airport offices throughout the United States are directed. Of its 1549 direct employees in this country, 1106 are located in the City of New York. It transports approximately 359,000 passengers and 25,000 tons of freight annually to and from New York and derives over 40% of its total U.S. revenues from such carriage. British Airways also provides international scheduled air services in the United States serving Boston, Philadelphia, Washington, Miami, Chicago, Detroit, Los Angeles and Anchorage.

5. On September 17, 1976 British Airways was served with a copy of Order 76-9-74 of the Board, annexed as Exhibit A. British Airways was given no notice and no opportunity to be heard before the Board prior to the issuance of this order.

6. Order 76-9-74 by its terms requires British Airways to file with the Board within seven days copies of all of its existing schedules for services to and from the United

States showing the type of equipment, number of seats (by class of service), frequency, days of operation, and arrival and departure times at each point served of all scheduled flights. In addition, the order requires British Airways to file proposed schedules with the Board at least 30 days prior to inauguration of service thereunder. Shortly after receipt of this order I received advice of counsel that the order in fact meant that British Airways was not to initiate any changes with respect to type of equipment, number of seats (by class of service), frequency, days of operation, or arrival and departure times of any of its existing flights or to initiate any new flights except upon at least 30 days' prior notice to the Board, as provided in the order and in Section 213.3(d) of the Board's Economic Regulations, 14 C.F.R. §213.3(d). Moreover, I was advised that, having issued this order, the Board had laid a foundation for issuance of a further order under Section 213.3(d) at any time, without notice or hearing, to disapprove any or all of British Airways' schedules to and from the United States with service thereunder to terminate within 30 days.

7. When advised of the full impact of Order 76-9-74, I understood that it posed serious and irreparable adverse consequences for the operations of British Airways in this country. The most immediate impact, and the object of my

first concern, was that it required cancellation or postponement of a third weekly frequency of service with the supersonic Concorde aircraft on the London-Washington route that had long been planned to commence on October 5, 1976. The resources for the service were committed, it had been held out to the public and reservations/ticket sales made for as many as 45 weeks beyond October 5. Numerous flights were fully booked, including the initial ones in both directions.

8. Beyond the immediate impact on our new Concorde frequency, the order prohibits British Airways from making any other changes in the frequency of any of its services except upon at least 30 days' advance notice. Thus, if a competitor should reduce his frequency on one of our routes, as has happened, British Airways will suffer an arbitrary time-lag in introducing a new frequency to meet unserved demand. Similarly, should a competitor increase his frequency, British Airways will suffer a competitive disadvantage in being unable to match that action for at least 30 days.

9. The most clearly foreseeable impact of the prohibition against changing frequency except upon at least 30 days' notice is with respect to extra sections of flights. When passenger reservations demand exceeds the seating capacity of an aircraft committed to a flight, British Airways frequently will schedule another aircraft to operate as

a second section of the flight. This occurs at peak holiday times such as the coming Thanksgiving and Christmas holidays, but also at other times such as the days preceeding a fare increase or at any other time of above normal demand. Also extra sections may be scheduled to suit an operational need such as routing an aircraft delayed here for mechanical repairs back to the United Kingdom, or returning an aircraft that came in as a charter flight. Rather than fly an aircraft empty across the North Atlantic British Airways will open it for sale as an extra section or additional flight for whatever revenue can be earned. Whether scheduled in response to experienced reservations demand or to suit the operational convenience of British Airways, extra sections of flights are not normally scheduled more than 30 days in advance. The prohibition of Order 76-9-74 against operating such additional frequencies without at least 30 days' advance notice to the Board will be most damaging.

10. Order 76-9-74 also prohibits changing the type of equipment used, or the seating configuration used on a particular aircraft type, on any of British Airways' flights unless notification to the Board is made at least 30 days in advance. While this requirement might not pose a great problem for some airlines which operate on only one or two

routes with one type of equipment having one seating configuration, it has an enormous impact on the scheduling flexibility of British Airways. On the average under its present summer schedule British Airways operates 168 scheduled flights a week to and from the nine U.S. cities previously listed to United Kingdom points (i.e., London from all U.S. points and additionally, Glasgow, Manchester, and Bermuda from New York), plus charter flights. British Airways presently uses five different aircraft types in its U.S. operations (BAC Concorde, Boeing 747, Boeing 707, BAC VC-10, and Douglas DC-10) and has a sixth, the new Lockheed L1011-500, on order. With respect to several of these aircraft types British Airways operates several different "standard" seating configurations. For example, it operates Boeing 747 aircraft configured for 404 seats (28 first class, 376 economy), 377 seats (28 first class, 349 economy) and 431 seats (23 first class, 408 economy). For Boeing 707 aircraft it has configurations of 146 seats (16 first class, 130 economy), 140 seats (20 first class, 120 economy), 174 seats (all economy) and 180 seats (all economy). Additionally, certain aircraft (e.g., Boeing 707) offer the capability of changing the configuration on an ad hoc basis by moving a bulkhead between the first and economy class sections and snapping in seats as required. Individual airplanes are not normally dedicated to a particular U. S.- U. K. route, but rotate on a much more complex

operating schedule over British Airways' worldwide routes (e.g., a Boeing 747 from New York to London may proceed on to Hong Kong or Sydney, Australia). These rotations are planned so that each aircraft of each type and each aircraft engine arrives in London for cyclical overhauls, maintenance, cleaning, painting and the like. There are thousands of possible occurrences in this very complex process that could necessitate substituting a different equipment type or an aircraft of different seating configuration on any given route or service on a regular basis on less than 30 days' notice. Moreover, so far I have dealt only with the operating considerations that might lead to such a change. Passenger demand or competitive necessity might also dictate a change from a smaller to larger aircraft or seating configuration.

11. Order 76-9-74 also denies British Airways the right to change the days of the week or the times of the day of its service at any of the points on its schedule to and from the U.S. without at least 30 days' advance notice. Normally, of course, British Airways would make every effort to avoid changes of this type on short notice since these (as distinguished, for example, from seating configurations) represent the product we advertise to the public and travel agents. However, there are occasions when such changes on

short notice could be necessary or desirable from an operating standpoint that would outweigh marketing considerations. Examples would be the necessity to adjust the schedule to a new airport curfew or to fly around an area affected by hostilities (e.g., Lebanon) which could affect the timing of prior or subsequent operations with the aircraft. The arbitrary barrier to making such changes in the U.S. posed by Order 76-9-74 on less than 30 days' notice would be very costly in such circumstances.

12. The foregoing direct operating restrictions are not the only injuries Order 76-9-74 works upon British Airways. The order places British Airways under imminent threat of having any or all of its schedules disapproved at any time without notice or hearing. It serves as a notice to the world, and particularly the world of professional travel agents who provide approximately 75% of our passenger business, that the reliability of our services is in jeopardy. Much of our business is booked with long lead times. For example, British Airways is now making its commitments for tour programs to be operated in the summer of 1977. I know that an airline threatened with a strike invariably loses business to its competitors on that account, and can perceive no reason why the general threat posed to our schedules by Order 76-9-74 would have a different effect

upon British Airways. Another area in which the threat posed by Order 76-9-74 is damaging is with regard to aircraft financing transactions. It is frequently a condition of such financings that no proceedings be pending against the carrier that could have a material adverse effect upon its licenses or business. British Airways has approximately \$364 million in aircraft presently on order in the United States alone and is presently engaged in negotiating financing arrangements (one of which is now awaiting a tax ruling of the Internal Revenue Service) for aircraft to be delivered within the next few months. As a result of Order 76-9-74 British Airways could find normal channels of financing at normal rates closed to it.

13. Since a petition for reconsideration of Order 76-9-74 was specifically barred by Section 213.3(e) of the Board's Economic Regulations, 14 C.F.R. §213.3(e), British Airways applied to the Board on September 27, 1976, for a stay of the order pending judicial review. (Exhibit B) By its Order 76-9-161, adopted September 30, 1976, the Board denied a stay pending review but, by a 3-2 divided vote, did grant a partial stay

permit the inauguration of the third London-Washington Concorde frequency scheduled for October 5, 1976 which otherwise would have been prohibited by Order 76-9-74. A copy of Order 76-9-161 is annexed as Exhibit C. Our third weekly London-Washington Concorde frequency was introduced on October 5, 1976 as planned.

14. Upon advice of counsel that Order 76-9-74 is unlawful, that the Board is without jurisdiction to issue it, and that it is reviewable in this Court in proceedings where a stay can be granted pending review, British Airways has as yet taken no action to bring its operations into compliance with the requirements of the order or to file its existing or proposed schedules with the Board. However, I am advised by counsel that civil penalties of up to \$1000 per day and criminal penalties of up to \$2000 per day can be assessed for each violation of the order. Moreover, I am advised that operations conducted at variance with the requirements of the order may create a lien on the aircraft involved for the civil penalties and that, on at least one prior occasion, a district court has authorized summary seizure of an airline aircraft upon ex parte representations that such a lien existed. In these circumstances the grant of a stay pending review is obviously imperative to avoid irreparable injury to British Airways from Order 76-9-74

while the legality of the order is being reviewed. It is particularly appropriate that a stay should be granted to prevent such injury where, as here, there is no suggestion that British Airways has acted in an unlawful or improper manner in any respect to warrant punitive action.

15. As part of my regular duties I am familiar with the political dialogue between the United Kingdom and United States Governments regarding aviation matters, including the matters referred to by the Board in Order 76-9-74 as having given rise to that order. In this connection I have had briefings from the international affairs personnel of British Airways who are given observer status at certain intergovernmental consultations and also from U.K. Government representatives in Washington and London. Prior to the issuance of Order 76-9-74, the Government of the United Kingdom had advised the Government of the United States that it found the levels of capacity originally proposed by the airlines of both countries on the London/Miami and London/Chicago routes in the coming winter would not bear the close relationship to demand required by paragraph (3) of the Final Act of the Bermuda Civil Aviation Conference of 1946 and confirmed in subsequent understandings between the two governments. It had further notified the U.S. Government that it has decided to require the airlines of both countries to adhere to

certain maximum numbers of frequencies with the wide-bodied aircraft they proposed to operate on these routes, with effect November 1, 1976. This notification was one development in a series of intergovernmental consultations spanning several years on appropriate means of limiting excessive airline capacity in relation to traffic demand which is uneconomical for the airlines, results in higher fares to the public and is wasteful of scarce fuel resources. Agreement was reached to this end between the governments in September, 1974 to encourage the airlines to negotiate capacity limitation agreements directly, subject to the approval of the governments. This agreement was publicly announced by the governments on September 20, 1974 in a Joint Statement released in this country under Press Release No. 369 of the Department of State, copy annexed as Exhibit D. I am advised representatives of the two governments also agreed in August, 1975 that in the absence of capacity accords between airlines the governments would consult, if necessary, on action to be taken. Airline capacity accords are not effective for the 1976/77 winter season on any of the U.S./U.K. routes and consultations between the two governments on the levels of capacity to be operated in light of the U.K. Government's proposal to limit capacity and the objection of the U.S. Government to it were in progress when Order 76-9-74 was

issued. On or about October 6, 1976 the two governments reached agreement on these issues on a basis other than the action originally proposed by the U.K. Government. Since that time no action of the U.K. Government to limit capacity over the objection of the U.S. Government has been in prospect.

16. Upon information and belief, at a time subsequent to the issuance of Order 76-9-74 but otherwise not specifically known to me, the Board issued a further order under Section 213.3(d) of its regulations to actually curtail the operations of British Airways between London and Los Angeles. That order was submitted to the President and was disapproved by him on the ground that agreement has been reached between the U.S. and U.K. Governments with respect to winter capacity. For the same reason, the President requested the Board to withdraw Order 76-9-74. Neither the Board's order under Section 213.3(d) nor the President's response to it has been made public at this time.

17. Whatever may have been the basis of the Board's disagreement with the previously proposed action of the United Kingdom Government, which is no longer an issue, it is essential on this motion to recall that the disruptive action it has taken against British Airways' business is politically motivated and not the result of any alleged

wrongful conduct by British Airways whatsoever. The burdens of such disruptions will fall in the first instance, and most directly, upon the cities, passengers, shippers, postal services, agents, employees and others who depend upon British Airways' services as an air common carrier.

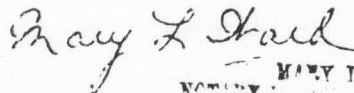
18. No prior application for the relief sought herein has been made to any court.

WHEREFORE, it is respectfully requested that the Court grant this motion for a stay pending review, together with such other and further relief as to the Court may seem just and proper.



R. D. H. Wilson

Sworn to before me this
twentieth day of October, 1976.



MARY L. WARD
NOTARY PUBLIC, State of New York
County of [illegible]
Commission Expires March 30, 1977

EXHIBIT A--ORDER 76-9-74 ANNEXED TO AFFIDAVIT
OF R.D.H. WILSON

Identical to Order printed herein at page A3.

EXHIBIT B--PETITIONER'S MOTION FOR STAY OF ORDER 76-9-74
ANNEXED TO AFFIDAVIT OF R.D.H. WILSON

Identical to Motion printed herein at page A6.

EXHIBIT C--ORDER 76-9-161 ANNEXED TO
AFFIDAVIT OF R.D.H. WILSON

Identical to Order printed herein at page A33.

A 60

EXHIBIT D--PRESS RELEASE NO. 369 OF THE DEPARTMENT OF STATE
ANNEXED TO AFFIDAVIT OF R.D.H. WILSON

PRESS DEPARTMENT OF STATE

ECOA 21/25/6

69 (48)



September 20, 1974

NO. 369

AVIATION AGREEMENT BETWEEN THE UNITED STATES AND THE UNITED KINGDOM

The Department of State welcomes the agreement reached between US and UK aviation delegations this week which will result in the improvement of the economic climate for US airlines operation in the North Atlantic, by cutting down excess airline capacity between the United States and the United Kingdom.

A joint US/UK statement covering the details of this agreement is attached.

This agreement has been undertaken in accordance with the US action plan approved by President Ford on September 18 to improve the competitive climate in which Pan Am and our other international air carriers operate. The Department of State is initiating early consultations with other European governments to achieve the elimination of capacity excess to market demand on services to these countries.

Mr. Payton

Attachment:

Joint Press Statement

For further information contact:

JOINT PRESS STATEMENT

Aviation delegations representing the United Kingdom and United States Governments reached agreement this week on the need for vigorous action to restore profitable airline operations in the North Atlantic market by eliminating excess capacity and establishing a cost-related fare structure.

Traffic demand across the North Atlantic for the coming winter season is expected to decline by some 10-20 percent over last winter.

In accordance with the objective agreed by the two governments, US and British airlines providing scheduled services between the two countries have agreed to capacity reductions for the winter season November 1974 through April 1975 of some 20 percent compared with the equivalent period of last year. This covers services between London and New York, Boston, Washington, Philadelphia, Detroit, Miami, Chicago and Los Angeles. Despite these substantial reductions, the airlines are confident that their services this winter will fully meet the public need. Consideration will be given later on to appropriate measures to rationalize capacity between the two countries for next summer.

During the consultations the two delegations expressed their full support for the current efforts of the North Atlantic airlines to develop an improved airline fare structure, taking account of the increased costs, particularly for fuel, being encountered by the industry. They welcomed the substantial progress already made towards establishing cost-related fares and minimum charter prices.

These actions reflect the determination of both Governments to return the North Atlantic market to profitable conditions.

* * * * *

ORDER 76-10-110 OF THE CIVIL AERONAUTICS BOARD
ADOPTED OCTOBER 26, 1976

Order 76-10-110



UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 26th day of October, 1976

In the matter of the
Schedules of

AIR BVI LIMITED
BRITISH AIRWAYS BOARD
BRITISH CALEDONIAN AIRWAYS LIMITED
CAYMAN AIRWAYS LIMITED
LIAT (1974) LIMITED

SERVED OCT 26 1976

Docket 29778

ORDER

On August 12, 1976, the Government of the United Kingdom delivered a note to the United States Department of State setting out the frequency levels and equipment types that the U.K. would permit U.S. carriers to operate in scheduled services between the U.S. and the U.K. from November 1, 1976 to April 23, 1977. The note was delivered over the objections of the U.S. Government which advised the U.K. that such unilateral action would be a serious violation of the U.S.-U.K. Air Transport Agreement; that the U.S. would not tolerate such action; and that failure of the U.K. to withdraw the schedule limitations would call for a retaliatory response.

This dispute led the Board to issue an order under Section 213.3(c) of its Economic Regulations, 14 C.F.R. 213.3 (C), directing British Airways Board (British Airways), among other carriers, to file its existing and proposed schedules with the Board (Order 76-9-74, September 14, 1976). That order, as modified by Order 76-9-161 (September 30, 1976), directed British Airways to file all existing and proposed schedules on September 28, 1976, with the exception of a third Concorde frequency at Washington which the carrier had been planning to inaugurate on October 5, 1976.^{1/}

^{1/} In accordance with section 213.3(c), proposed schedules were required to be filed 30 days in advance of their intended effective date.

*Order 76-10-110 of the Civil Aeronautics Board
Adopted October 26, 1976*

As to the latter flight, the Board stayed its filing requirement until October 6, 1976, so that the flight could be filed as an "existing" schedule. 2/

On September 29, 1976, the Board adopted an order requiring British Airways to reduce its service between Los Angeles and London from seven weekly frequencies to five. That order was adopted under section 213.3(d) of the Economic Regulations, in accordance with which it was subject to stay or disapproval by the President within 10 days.

By letter dated October 9, 1976, the President advised the Board that he had disapproved the schedule-reduction order because "the issues necessitating the actions proposed in the order have been satisfactorily resolved with the British authorities." He also expressed the view that it would be "appropriate and in the interests of our foreign policy" to terminate the schedule-filing requirements imposed by Order 76-9-74.

The President's views as to the relationship between Order 76-9-74 and the nation's foreign policy are obviously entitled to the Board's great respect. We will therefore vacate Orders 76-9-74 and 76-9-161. For the reasons now to be stated, however, such action will not be unqualified.

Orders 76-9-74 and 76-9-161 required, among other things, that all existing schedules be filed on September 28, 1976 and that the third Concorde frequency at Washington be filed on October 6, 1976 (the day after it became an existing frequency). While the dispute which led to issuance of those orders was settled through inter-governmental negotiation on October 8, 1976, thereby eliminating the predicate for the orders, the fact remains that British Airways failed to comply with them while their predicate remained viable. This the Board cannot ignore.

Part 213 was adopted by the Board and approved by the President to give the United States an effective retaliatory tool for, among other things, actions by the governments of other nations deemed to interfere with U.S. carriers' rights under

2/ This was done to obviate any impediment to inauguration of the schedule planned for October 5 as a result of the 30-day advance-filing requirement applicable to proposed schedules.

*Order 76-10-110 of the Civil Aeronautics Board
Adopted October 26, 1976*

international agreements. While the ultimate retaliation under Part 213 is schedule disapproval, and while it is the President who makes the final decision as to whether such action will be taken, a schedule-filing order is a vital part of the 213 mechanism, and it is this Board which makes the decision to issue such an order. 3/

In performing its function of requiring foreign air carriers to file schedules under Part 213, the Board acts as an independent agency of the United States Government. As such, and as long as this remains a government of laws, the Board obviously cannot stand idly by and permit its orders to be ignored (if not flaunted) without fear or risk of enforcement liability. Thus, while deferring to the President's view that it would be in the interest of U.S. foreign policy to discontinue the schedule-filing requirement upon settlement of the underlying U.S.-U.K. dispute, the Board will not give British Airways general absolution for its noncompliance with the schedule-filing orders. Specifically, the Board will not absolve the carrier for failure to obey those orders--insofar as they required the filing of existing schedules--up to the date on which settlement resolved what the President termed the "issues necessitating" invocation of Part 213. 4/ In other words, British Airways will remain subject to the enforcement provisions of the Federal Aviation Act for noncompliance during the period the dispute "necessitating" the orders remained unresolved, i.e., up to October 8, 1976, but not for subsequent noncompliance. This, in the Board's opinion, strikes an appropriate balance and is consistent with both the public interest in the nation's foreign policy which was of concern to the President once the dispute was settled, and the public interest in obedience to Board orders. 5/

3/ A schedule-filing order is vital to the working of Part 213 for several reasons. In the first place, it is the technical condition precedent for schedule-disapproval. Apart from this, a filing order standing alone can serve as a deterrent to continued improper action by foreign governments simply by placing the U.S. in a position to take the more drastic retaliatory action promptly.

4/ The reasons for confining enforcement liability to that resulting from failure to file existing schedules are explained in n. 5, infra.

5/ Similar considerations underlie the decision to confine any enforcement liability to that resulting from British Airways' failure to file existing schedules. Because of the 30-day advance-notice requirement applicable to proposed schedules, the carrier's

*Order 76-10-110 of the Civil Aeronautics Board
Adopted October 26, 1976*

Based on the foregoing,

IT IS ORDERED THAT:

1. Orders 76-9-74 and 76-9-161 are vacated and their effectiveness terminated nunc pro tunc as of October 8, 1976; and
2. This order shall be subject to any necessary approval by the United States Court of Appeals for the Second Circuit. 6/

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)

(Footnote continued)

5/ failure to file proposed schedules (if any) between the dates the schedule-filing requirement was to be met (September 28 and, in the case of the third Concorde flight at Washington, October 6) and the date the basic dispute was settled (October 8) might arguably mean that a new schedule placed in effect after October 8, but less than 30 days thereafter, would be a violation of the order subjecting British Airways to enforcement action. This would be at odds with the balance the Board is striking by this order.

6/ On October 21, 1976 British Airways filed a petition for judicial review of Order 76-9-74. British Airways Board v. Civil Aeronautics Board, No. 76-4226.

STIPULATION WITHDRAWING MOTION FOR STAY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X	:	
	:	Docket No.
BRITISH AIRWAYS BOARD,	:	76-4226
Petitioner,	:	
	:	Stipulation
- against -	:	Withdrawing Motion
	:	For Stay
CIVIL AERONAUTICS BOARD,	:	-----
Respondent.	:	
-----X	:	

IT IS HEREBY STIPULATED AND AGREED by and between
the undersigned attorneys of record for the parties herein,

THAT on October 21, 1976 Petitioner, British Airways Board ("British Airways"), filed with this Court a Petition seeking judicial review, pursuant to Section 1006 of the Federal Aviation Act ("the Act") 49 U.S.C. §1486, of Order 76-9-74 of Respondent, Civil Aeronautics Board ("the Board"), dated September 14, 1976;

THAT on October 21, 1976 British Airways filed with this Court a Motion pursuant to Rule 18 of the Federal Rules of Appellate Procedure, seeking a stay of that Order pending its review by this Court;

Stipulation Withdrawing Motion for Stay

THAT on October 26, 1976, the Board issued its Order 76-10-110 (a copy of which is annexed hereto) partially vacating its Order 76-9-74, subject to any necessary approval of this Court^{1/}

THAT in view of the Board's action, in its Order 76-10-110, and its further undertaking herein, British Airways agrees to withdraw its pending Motion for Stay of Order 76-9-74 without prejudice to a renewal thereof;

THAT the Board agrees not to institute any proceeding against British Airways with respect to any non-compliance with the Board's Order 76-9-74 during the pendency of this Court's review of that Order in Docket 76-4226, without notifying counsel for British Airways prior to institution of any such proceeding, affording British Airways a reasonable opportunity to renew, and have this Court act upon a request for a stay; and

THAT this stipulation does not indicate a consent, by British Airways, to any necessary approval by this Court

^{1/} Cf. Section 1006(d) of the Act, 49 U.S.C. Section 1486(d). United States Line Company against Civil Aeronautics Board 165 F.2d 819, 852 (2 Cir. 1947).

Stipulation Withdrawing Motion for Stay

of the terms of the Board's Order 76-10-110.

Dated: October 28, 1976
New York, New York

Glen M. Bendixsen
Glen M. Bendixsen
Attorney for Civil
Aeronautics Board

Office of the General
Counsel
1825 Connecticut Avenue
Washington, D. C. 20428
(202) 673-5094

William C. Clarke
William C. Clarke

Peter F. Vetro
Peter F. Vetro

Attorneys for British Airways
Board.

245 Park Avenue
New York, New York 10017
(212) 983-5352

SO ORDERED:

AMENDED PETITION FOR REVIEW OF ORDERS 76-9-74, 76-9-161
AND 76-10-110 FILED PURSUANT TO 49 USC §1486

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
BRITISH AIRWAYS BOARD, :
Petitioner, : Docket No. 76-4226
- against - : Amended Petition for
CIVIL AERONAUTICS BOARD, : Review of Agency Order
Respondent. :
-----x

British Airways Board, in this Amended Petition, seeks judicial review pursuant to 49 U.S.C. §1486 and Rule 15 of the Federal Rules of Appellate Procedure, of

1. ~~Order 76-9-74~~ of the Civil Aeronautics Board, dated September 14, 1976, issued pursuant to §213.3(c) of the Board's Economic Regulations [14 CFR §213.3(c)] requiring Petitioner to file with the Board:

- (a) all proposed schedules of service between the United Kingdom, its territories and possessions, and the United States, the proposed effective date of such schedules and the proposed termination date of such schedules at least 30 days prior to inauguration of such service; and

*Amended Petition for Review of Orders 76-9-74, 76-9-161
and 76-10-110 Filed Pursuant to 49 USC §1486*

- (b) all existing schedules of service between the United Kingdom, its territories and possessions, and the United States, including scheduled services via intermediate points and to points beyond the United States; and
- (c) with respect to each set of schedules the type of equipment used; the number of seats by class of service; the type of aircraft normally assigned by flight; the times of arrival and departure at each point; and the frequency and days of operation of each flight.

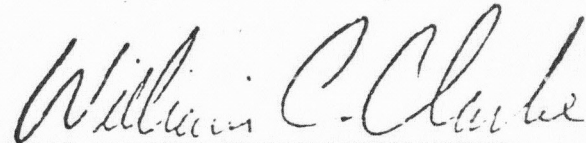
2. Order 76-9-161 of the Civil Aeronautics Board dated September 30, 1976 which modified the Board's previous Order No. 76-9-74;

3. Order 76-10-110 of the Civil Aeronautics Board dated October 26, 1976 which modified the Board's previous Orders 76-9-74 and 76-9-161.

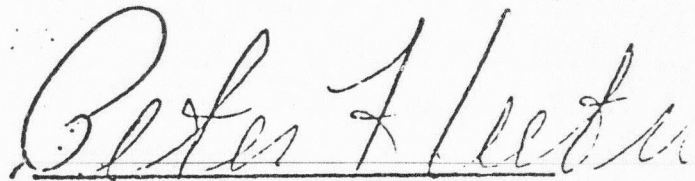
Amended Petition for Review of Orders 76-9-74, 76-9-161
and 76-10-110 Filed Pursuant to 49 USC §1486

WHEREFORE, petitioner requests that the foregoing
orders be vacated and declared of no effect, and for such
other and further relief which this Court deems appropriate.

Dated: November 1, 1976
New York, New York.



William C. Clarke



Peter F. Vetro

Attorneys for
British Airways Board
245 Park Avenue
New York, New York
(212) 985-5552

A 72

LETTER DATED NOVEMBER 26, 1976 OF GLEN M. BENDIXSEN,
ASSISTANT GENERAL COUNSEL, LITIGATION AND RESEARCH,
CIVIL AERONAUTICS BOARD TO BRITISH AIRWAYS BOARD



CIVIL AERONAUTICS BOARD

WASHINGTON, D.C. 20428



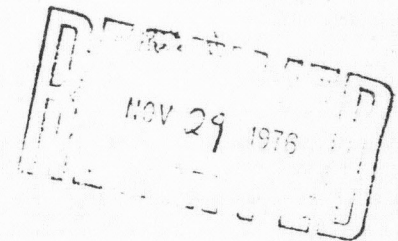
NOV 26 1976

IN REPLY REFER TO: B-38

William C. Clarke, Esq.
British Airways Board
245 Park Avenue
New York, New York 10017

Dear Mr. Clarke:

Re: British Airways Board v.
Civil Aeronautics Board,
C.A. 2, No. 76-4226



In accordance with the stipulation filed in this case on October 29, 1976, this is to advise that the Board's Bureau of Enforcement plans to institute an administrative enforcement proceeding against British Airways under Subpart B of the Board's Procedural Regulations (14 C.F.R. 200 et. seq.) with respect to British Airways' alleged noncompliance with Order 76-9-74. The petition for enforcement will be filed no sooner than December 10, 1976.

If British Airways renews its motion for stay, notices the motion for argument no later than Tuesday, December 21, and serves the Board with the supporting papers in accordance with Rule 27(a) of the Second Circuit's rules, i.e., by December 6 in the case of service by mail, or December 9 in the case of personal service, institution of the enforcement proceeding will be postponed until the court has ruled on the motion.

Sincerely,

Glen M. Bendixsen
RT

Glen M. Bendixsen
Associate General Counsel
Litigation and Research

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LETTER DATED JUNE 3, 1970 OF PRESIDENT RICHARD M. NIXON
ADDRESSED TO THE CIVIL AERONAUTICS BOARD, ISSUED
WITH C.A.B. ORDER 70-6-33, JUNE 14, 1970

THE WHITE HOUSE

WASHINGTON

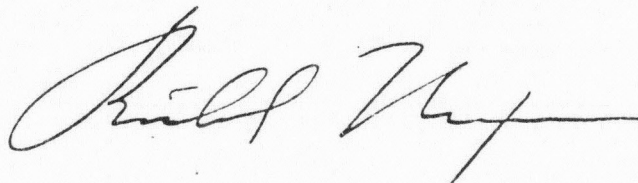
June 3, 1970

Dear Mr. Chairman:

It is a pleasure to inform you that I have approved the Civil Aeronautics Board regulation Part 213 in the Foreign Air Carrier Permit Terms Investigation (Docket 12063). The order should be made effective immediately rather than sixty days after my approval.

I concur in the Board's unanimous opinion that Part 213 powers should provide increased incentives for foreign governments to refrain from unilateral restrictionism and will reaffirm this Government's commitment to the "Bermuda principles" which permit airline management initially to determine appropriate schedule frequencies. The intention of the Board to use these powers sparingly and only after other nations have taken unwarranted restrictive action against United States carriers is consistent with our international aviation policy.

Sincerely,



Honorable Secor Browne
Chairman
Civil Aeronautics Board
Washington, D. C. 20428

FOREIGN AIR CARRIER PERMIT ISSUED TO BRITISH AIRWAYS BOARD
PURSUANT TO CIVIL AERONAUTICS BOARD ORDER 74-4-17,
APPROVED BY THE PRESIDENT APRIL 2, 1974

Issued pursuant to
Order 74-4-17

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER
(as reissued)

BRITISH AIRWAYS BOARD

is hereby authorized, subject to the provisions hereinafter set forth,
the provisions of the Federal Aviation Act of 1958, and the orders,
rules, and regulations issued thereunder, to engage in foreign air
transportation with respect to persons, property, and mail, as follows:

1. Between the coterminal points London and Manchester, England, and Prestwick, Scotland, the intermediate points Shannon, Ireland; Iceland; Gander and Montreal, Canada; the Azores; Bermuda; and the coterminal points Boston, Mass., New York, N.Y., Philadelphia, Pa., Baltimore, Md., Washington, D. C., Chicago, Ill., and Detroit, Mich., and (a) between the intermediate points New York, N. Y.; the Bahama Islands; Cuba; Jamaica; and Panama; a point in Colombia; a point in Ecuador; the intermediate point Lima, Peru; and the terminal point Santiago, Chile; and (b) between the intermediate points New York, N. Y.; St. Kitts; Antigua; Dominica; St. Lucia; St. Vincent; Barbados; Grenada; Trinidad and Tobago; and the terminal point Guyana;
2. Between the terminal point London, England; the intermediate points New York, N. Y.; San Francisco, Calif.; Honolulu, Hawaii; Wake; and Tokyo, Japan; and the terminal point Hong Kong;
3. Between the terminal point the Bahama Islands, and the terminal point New York, N. Y.;
4. Between a point or coterminal points in the Bahama Islands and the coterminal points Miami and Palm Beach, Fla.;
5. Between the terminal point London, England; the intermediate point Chicago, Ill.; and the terminal points Los Angeles and San Francisco, Calif.;
6. Between the terminal point Bermuda and the coterminal points Baltimore, Md., Washington, D. C., New York, N. Y., and Boston, Mass.;

*Foreign Air Carrier Permit Issued to British Airways Board
Pursuant to Civil Aeronautics Board Order 74-4-17,
Approved by the President April 2, 1974*

7. Between the terminal point London, England; the intermediate points New York, N. Y.; San Francisco and Los Angeles, Calif.; Honolulu, Hawaii; American Samoa; and Fiji; and coterminal points in Australia and New Zealand;
8. Between the terminal point London, England, and the terminal point Miami, Fla.

The holder hereof shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

This permit shall be subject to the following terms, conditions, and limitations:

- (1) Only one of the California points designated on segment 5 and only one of the California points designated on segment 7 may be served at any given time. The holder shall have the right to substitute, at its option, Los Angeles for San Francisco and vice versa on each such segment: Provided, That one such substitution may be made at any time with respect to each such segment, and thereafter any further substitutions may be made only at intervals of no less than three years, upon six months' notice through diplomatic channels.
- (2) All flights over segment 2 or 7 shall serve New York, N. Y.
- (3) The holder shall not serve American Samoa and Fiji on the same flight: Provided, That this condition shall terminate upon the effective date of any exchange of South Pacific local service routes which may be agreed upon by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States.
- (4) The holder shall serve Cuba; Panama; a point in Colombia; a point in Ecuador; Lima, Peru; Santiago, Chile; St. Kitts; Antigua; Dominica; St. Lucia; St. Vincent; Barbados; Grenada; Trinidad and Tobago; Guyana, and, except for flights over segment 3 or 4 of the above-described route, the Bahama Islands and/or Jamaica only on flights which originate or terminate at London or Manchester, England, or Prestwick, Scotland.
- (5) The holder shall not serve Chicago, Ill., Detroit, Mich., Baltimore, Md., Washington, D. C., Philadelphia, Pa., and/or Boston, Mass., on any flight which serves the Bahama Islands; Cuba; Jamaica; Panama; a point in Colombia; a point in Ecuador; Lima, Peru; Santiago, Chile; St. Kitts; Antigua; Dominica; St. Lucia; St. Vincent; Barbados; Grenada; Trinidad and Tobago; or Guyana.

*Foreign Air Carrier Permit Issued to British Airways Board
Pursuant to Civil Aeronautics Board Order 74-4-17,
Approved by the President April 2, 1974*

(6) The holder shall not grant stopover privileges at Chicago, Ill., on flights over segment 5.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the United Kingdom of Great Britain and Northern Ireland for British international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the United Kingdom of Great Britain and Northern Ireland shall be parties.

The exercise of the privileges granted hereby shall be subject to such reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on April 1, 1974. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the route authorized by this permit from the routes which may be operated by airlines designated by the Government of the United Kingdom of Great Britain and Northern Ireland, or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of the United Kingdom of Great Britain and Northern Ireland in lieu of the holder hereof, or (3) upon the termination or expiration of the Air Services Agreement between the Government of the United States and the Government of the United Kingdom of Great Britain and Northern Ireland, effective February 11, 1946, as amended by exchanges of notes including an exchange of notes effective May 27, 1966: Provided, however, That clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and the United Kingdom of Great Britain and Northern Ireland are or shall become parties.

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*Foreign Air Carrier Permit Issued to British Airways Board
Pursuant to Civil Aeronautics Board Order 74-4-17,
Approved by the President April 2, 1974*

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 19th day of March, 1974.

EDWIN Z. HOLLAND

Secretary

(SEAL)

Issuance of this permit
to the holder approved by the
President of the United States
on April 2, 1974
in Order 74-4-17.

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FOREIGN AIR CARRIER PERMIT ISSUED TO BRITISH AIRWAYS BOARD
PURSUANT TO CIVIL AERONAUTICS BOARD ORDER 75-3-68,
APPROVED BY THE PRESIDENT MARCH 19, 1975

Issued pursuant to
Order 75-3-68

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER
(as amended)

BRITISH AIRWAYS BOARD

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules and regulations issued thereunder, to engage in foreign air transportation as follows:

1. Between a point or points in the United Kingdom of Great Britain and Northern Ireland (United Kingdom) and the terminal point Anchorage, Alaska, with respect to persons, property, and mail.
2. Between a point or points in the United Kingdom and the intermediate point Anchorage, Alaska, and between the intermediate point Anchorage, Alaska, and the coterminal points Tokyo and Osaka, Japan, with respect to persons and their accompanying baggage.

This permit shall be subject to the following conditions:

(1) The foreign air transportation authorized over segment 1 of this permit shall be provided only on scheduled flights operated by the holder between a point or points in the United Kingdom, on the one hand, and Tokyo and Osaka, Japan, or Tokyo or Osaka, Japan, on the other hand.

(2) The holder in providing service over segment 2 of this permit shall be limited (except as may otherwise be authorized in emergency situations by Board order or regulation) to disembarking at Anchorage, Alaska, passengers and their accompanying baggage transported by the holder on scheduled flights operated between a point or points in the United Kingdom, on the one hand, and Tokyo and Osaka, Japan, or Tokyo or Osaka, Japan, on the other hand, and moving under a passenger ticket and baggage check (or air waybill) providing for transportation between a point or points in the United Kingdom, on the one hand, and Tokyo and Osaka, Japan or Tokyo or Osaka, Japan, on the other hand: Provided, however, That such passengers and accompanying baggage are subsequently re-embarked by the holder in its aircraft on a scheduled flight operated between a point or points in the United Kingdom, on the one hand, and Tokyo and Osaka, Japan, or Tokyo or Osaka, Japan

*Foreign Air Carrier Permit Issued to British Airways Board
Pursuant to Civil Aeronautics Board Order 75-3-68,
Approved by the President March 19, 1975*

on the other hand, and are transported in accordance with the original routing as specified in the ticket. Re-embarkation shall occur at any time during the validity of the ticket but in no event shall it occur later than one year from the date of disembarkation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the United Kingdom for British international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the United Kingdom shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions, the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on March 19, 1975, and shall terminate five years thereafter: Provided, however, That if in the aforesaid period during which this permit shall be effective, the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement, to which the United States and the United Kingdom are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

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*Foreign Air Carrier Permit Issued to British Airways Board
Pursuant to Civil Aeronautics Board Order 75-3-68,
Approved by the President March 19, 1975*

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 23rd day of January, 1975.

EDWIN Z. HOLLAND

Secretary

(SEAL)

Issuance of this permit to
the holder approved by the
President of the United States
on March 19, 1975
in Order 75-3-68.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND
THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND (BERMUDA AGREEMENT)

[Treaties and Other International Acts Series 1507]

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND [1]

Signed at Bermuda February 11, 1946. Effective February 11, 1946

AND FINAL ACT OF THE CIVIL AVIATION CONFERENCE

Held at Bermuda, January 15 to February 11, 1946

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND,

Desiring to conclude an Agreement for the purpose of promoting
direct air communications as soon as possible between their respective
territories,

Have accordingly appointed authorised representatives for this
purpose, who have agreed as follows:—

ARTICLE 1

Each Contracting Party grants to the other Contracting Party
rights to the extent described in the Annex to this Agreement for the
purpose of the establishment of air services described therein or as
amended in accordance with Section IV of the Annex (hereinafter
referred to as "the agreed services").

ARTICLE 2

(1) The agreed services may be inaugurated immediately or at a
later date at the option of the Contracting Party to whom the rights
are granted, but not before (a) the Contracting Party to whom the
rights have been granted has designated an air carrier or carriers for
the specified route or routes, and (b) the Contracting Party granting
the rights has given the appropriate operating permission to the air
carrier or carriers concerned (which, subject to the provisions of para-
graph (2) of this Article and of Article 6, it shall do without undue
delay).

(2) The designated air carrier or carriers may be required to satisfy
the aeronautical authorities of the Contracting Party granting the
rights that it or they is or are qualified to fulfil the conditions pre-

¹ Applies also in Ceylon, Cyprus, Ghana, Jamaica, Kenya, Malaysia, Nigeria, Sierra
Leone, Tanzania, Trinidad and Tobago.

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scribed by or under the laws and regulations normally applied by those authorities to the operations of commercial air carriers.

(3) In areas of military occupation, or in areas affected thereby, such inauguration will continue to be subject, where necessary, to the approval of the competent military authorities.

ARTICLE 3

(1) The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated air carrier or carriers of the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international air services.

(2) Fuel, lubricating oils and spare parts introduced into, or taken on board aircraft in, the territory of one Contracting Party by, or on behalf of, a designated air carrier of the other Contracting Party and intended solely for use by the aircraft of such carrier shall be accorded, with respect to customs duties, inspection fees or other charges imposed by the former Contracting Party, treatment not less favourable than that granted to national air carriers engaged in international air services or such carriers of the most favoured nation.

(3) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of a designated air carrier of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights within that territory.

ARTICLE 4

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognised as valid by the other Contracting Party for the purpose of operation of the agreed services. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another state.

ARTICLE 5

(1) The laws and regulations of one Contracting Party relating to entry into or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated air carrier or carriers of the other Contracting Party.

(2) The laws and regulations of one Contracting Party relating to the entry into or departure from its territory of passengers, crew, or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs and quarantine) shall be applicable to the passengers, crew or cargo of the aircraft of the designated air carrier or carriers of the other Contracting Party while in the territory of the first Contracting Party.

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AIR LAWS AND TREATIES OF THE WORLD

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ARTICLE 6

Each Contracting Party reserves the right to withhold or revoke the exercise of the rights specified in the Annex to this Agreement by a carrier designated by the other Contracting Party in the event that it is not satisfied that substantial ownership and effective control of such carrier are vested in nationals of either Contracting Party, or in case of failure by that carrier to comply with the laws and regulations referred to in Article 5 hereof, or otherwise to fulfil the conditions under which the rights are granted in accordance with this Agreement and its Annex.

ARTICLE 7

This Agreement shall be registered with the Provisional International Civil Aviation Organisation set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944.^[1]

ARTICLE 8

Except as otherwise provided in this Agreement or its Annex, if either of the Contracting Parties considers it desirable to modify the terms of the Annex to this Agreement, it may request consultation between the aeronautical authorities of both Contracting Parties, such consultation to begin within a period of sixty days from the date of the request. When these authorities agree on modifications to the Annex, these modifications will come into effect when they have been confirmed by an Exchange of Notes through the diplomatic channel.

ARTICLE 9

Except as otherwise provided in this Agreement or in its Annex, any dispute between the Contracting Parties relating to the interpretation or application of this Agreement or its Annex which cannot be settled through consultation shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organisation (in accordance with the provisions of Article III Section 6 (8) of the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944) or its successor.

ARTICLE 10

The terms and conditions of operating rights which may have been granted previously by either Contracting Party to the other Contracting Party or to an air carrier of such other Contracting Party shall not be abrogated by the present Agreement. Except as may be modified by the present Agreement, the general principles of the air navigation arrangement between the two Contracting Parties, which was effected by an Exchange of Notes dated March 28 and April 5, 1935, shall continue in force in so far as they are applicable to scheduled international air services, until otherwise agreed by the Contracting Parties.

ARTICLE 11

If a general multilateral air Convention enters into force in relation to both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such Convention.

¹ [Executive Agreement Series 469]

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ARTICLE 12

For the purposes of this Agreement and its Annex, unless the context otherwise requires:

(a) The term "aeronautical authorities" shall mean, in the case of the United States, the Civil Aeronautics Board and any person or body authorised to perform the functions presently exercised by the Board or similar functions, and, in the case of the United Kingdom, the Minister of Civil Aviation for the time being, and any person or body authorised to perform any functions presently exercised by the said Minister or similar functions.

(b) The term "designated air carriers" shall mean the air transport enterprises which the aeronautical authorities of one of the Contracting Parties have notified in writing to the aeronautical authorities of the other Contracting Party as the air carriers designated by it in accordance with Article 2 of this Agreement for the routes specified in such notification.

(c) The term "territory" shall have the meaning assigned to it by Article 2 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944.^[1]

(d) The definitions contained in paragraph (a), (b) and (d) of Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944 shall apply.

ARTICLE 13

Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement or its Annex which may be desirable in the light of experience. Pending the outcome of such consultation, it shall be open to either Party at any time to give notice to the other of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organisation or its successor. If such notice is given, this Agreement shall terminate twelve calendar months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party notice shall be deemed to have been received fourteen days after the receipt of the notice by the Provisional International Civil Aviation Organisation or its successor.

ARTICLE 14

This Agreement, including the provisions of the Annex hereto, will come into force on the day it is signed.

IN WITNESS whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate this eleventh day of February Nineteen-hundred-and-forty-six at Bermuda.

ANNEX

I

For the purposes of operating air services on the routes specified below in Section III of this Annex or as amended in accordance with Section IV hereof, the designated air carriers of one of the Con-

^[1] [International Civil Aviation Conference, Chicago, Illinois, November 1 to December 7, 1944, Final Act and Related Documents, pp. 59-86.]

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Contracting Parties shall be accorded in the territory of the other Contracting Party the use on the said routes at each of the places specified therein of all the airports (being airports designated for international air services), together with ancillary facilities and rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail in full accord and compliance with the principles recited and agreed in the Final Act of the Conference on Civil Aviation held between the Governments of the United States and of the United Kingdom at Bermuda from January 15 to February 11, 1946, and subject to the provisions of Sections II and V of this Annex.

II

(a) Rates to be charged by the air carriers of either Contracting Party between points in the territory of the United States and points in the territory of the United Kingdom referred to in this Annex shall be subject to the approval of the Contracting Parties within their respective constitutional powers and obligations. In the event of disagreement the matter in dispute shall be handled as provided below.

(b) The Civil Aeronautics Board of the United States having announced its intention to approve the rate conference machinery of the International Air Transport Association (hereinafter called "IATA"), as submitted, for a period of one year beginning in February, 1946, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval by the Board.

(c) Any new rate proposed by the air carrier or carriers of either Contracting Party shall be filed with the aeronautical authorities of both Contracting Parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both Contracting Parties.

(d) The Contracting Parties hereby agree that where:

(1) during the period of the Board's approval of the IATA rate conference machinery, either any specific rate agreement is not approved within a reasonable time by either Contracting Party or a conference of IATA is unable to agree on a rate, or

(2) at any time no IATA machinery is applicable, or

(3) either Contracting Party at any time withdraws or fails to renew its approval of that part of the IATA rate conference machinery relevant to this provision,

the procedure described in paragraphs (e), (f) and (g) hereof shall apply.

(e) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one Contracting Party to a point or points in the terri-

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tory of the other Contracting Party from becoming effective, if, in the judgment of the aeronautical authorities of the Contracting Party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic. If one of the Contracting Parties on receipt of the notification referred to in paragraph (c) above is dissatisfied with the new rate proposed by the air carrier or carriers of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will exercise its statutory powers to give effect to such agreement. If agreement has not been reached at the end of the thirty day period referred to in paragraph (c) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (g) below.

(f) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied with any new rate proposed by the air carrier or carriers of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty day period referred to in paragraph (c) above, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers. It is recognised that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

(g) When in any case under paragraphs (e) and (f) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the air carrier or carriers of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional International Civil Aviation Organisation or to its successor for an advisory report, and each Party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

(h) The rates to be agreed in accordance with the above paragraphs shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by any other air carriers.

(j) The Executive Branch of the Government of the United States agrees to use its best efforts to secure legislation empowering the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States.

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III

(a) ROUTES TO BE SERVED BY AIR CARRIERS OF THE UNITED KINGDOM

(In both directions; stops for non-traffic purposes omitted)

POINT OF DEPARTURE (Any one or more of the following)	INTERMEDIATE POINTS (Any one or more of the following, if desired)	DESTINATION IN U.S. TERRITORY (Any one or more of the following, if desired)	POINTS BEYOND (Any one or more of the following, if desired)
1. London		New York	San Francisco and the points on Route 7.
2. London Prestwick	Shannon Iceland Azores Bermuda Gander Montreal	New York Chicago Detroit Philadelphia Washington Baltimore Boston	
3. *London Prestwick	Shannon Iceland Azores Bermuda Gander Montreal	New York	(a) New Orleans Mexico City (b) Cuba Jamaica Panama A point in Colombia A point in Ecuador Lima Santiago
4. Bermuda Barbados		Baltimore Washington New York	Montreal
5. *Trinidad British Guiana Jamaica British Honduras	Tobago Barbados Grenada St. Vincent St. Lucia Antigua St. Kitts St. Thomas San Juan Ciudad Trujillo Port au Prince Jamaica Cuba Nassau Bermuda	Miami	
6. Nassau Cat Cay		Miami Palm Beach	
7. Singapore Hong Kong	Manila Tokyo Guam Wake Midway	Honolulu San Francisco	

*Notice will be given by the aeronautical authorities of the United Kingdom to the aeronautical authorities of the United States of the route service patterns according to which services will be inaugurated on these routes

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(b) ROUTES TO BE SERVED BY AIR CARRIERS OF THE UNITED STATES

(In both directions; stops for non-traffic purposes omitted)

POINT OF DEPARTURE (Any one or more of the following)	INTERMEDIATE POINTS (Any one or more of the following, if desired)	DESTINATION IN U.K. TERRITORY (Any one or more of the following, if desired)	POINTS BEYOND (Any one or more of the following, if desired)
1*Chicago Detroit Washington Philadelphia New York Boston Baltimore	Gander Greenland Iceland Shannon	London Prestwick	Amsterdam Helsinki Copenhagen Stavanger Oslo Stockholm Warsaw Berlin Frankfurt Moscow Leningrad Points in the Baltic countries
2.*New York Chicago Philadelphia Baltimore Washington Boston Detroit	Gander Greenland Iceland Shannon	London Prestwick	Brussels Munich Prague Vienna Budapest Belgrade Bucharest Istanbul Ankara A point in Iran Beirut A point in Syria A point in Iraq A point in Afghanistan Karachi Delhi Calcutta
3.*Chicago Detroit Washington New York Boston Baltimore Philadelphia	Gander Shannon Greenland Iceland Paris A point in Switzerland Rome Athens Cairo	Lydda	A point in Iraq Dhahran Bombay Calcutta A point in Burma A point in Siam A point or points in Indo-China A point or points in China
4. Chicago Detroit Washington New York Boston Baltimore Philadelphia	Gander Azores Lisbon (a) (b) Algiers Tunis Tripoli Benghazi Cairo	Lydda	From Lydda to points beyond as described in Route 3.

*Notice will be given by the aeronautical authorities of the United States to the aeronautical authorities of the United Kingdom of the route service patterns according to which services will be inaugurated on these routes.

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POINT OF DEPARTURE (Any one or more of the following)	INTERMEDIATE POINTS (Any one or more of the following, if desired)	DESTINATION IN U.K. TERRITORY (Any one or more of the following, if desired)	POINTS BEYOND (Any one or more of the following, if desired)
5. New York Chicago Detroit Washington Philadelphia Boston Baltimore	Gander Bermuda Azores	London	(From the Azores) Lisbon Barcelona Marseilles
6. *San Francisco Los Angeles	Honolulu Midway Wake Guam Manila	Hong Kong	Macao A point or points in China A point or points in Indo-China A point or points in Siam A point or points in Burma Calcutta
7. *San Francisco Los Angeles	Honolulu Midway Wake Guam Manila A point or points in Indo-China	Singapore	Batavia
8. New York Washington Baltimore		Bermuda	
9. Miami Palm Beach		Cat Cay Nassau	
10. Miami	Points in Cuba	Jamaica	(a) Baranquilla via South American points to Balboa (b) Baranquilla via South American points to Trinidad
11. New Orleans Houston	Points in Cuba	Jamaica	Aruba South American points
12. New York Miami	Camaguey Port au Prince Cuidad Trujillo San Juan Saint Thomas Point a Pitre Fort de France	Antigua St. Lucia Trinidad British Guiana	Via South Ameri- can points to Buenos Aires

*Notice will be given by the aeronautical authorities of the United States to the aeronautical authorities of the United Kingdom of the route service patterns according to which services will be inaugurated on these routes.

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POINT OF DEPARTURE (Any one or more of the following)	INTERMEDIATE POINTS (Any one or more of the following, if desired)	DESTINATION IN U.K. TERRITORY (Any one or more of the following, if desired)	POINTS BEYOND (Any one or more of the following, if desired)
13. New York	(a) Azores Dakar Monrovia (b) San Juan Trinidad British Guiana Belem Natal Monrovia Ascension Is- land	Accra or Lagos	Leopoldville Johannesburg

IV

(a) Amendments made by either Contracting Party to the routes described in Section III of this Annex which change the points served in the territory of the other Contracting Party will be made only after consultation in accordance with the provisions of Article 8 of this Agreement.

(b) Other route changes desired by either Contracting Party may be made and put into effect at any time, prompt notice to that effect being given by the aeronautical authorities of the Contracting Party concerned to the aeronautical authorities of the other Contracting Party. If such other Contracting Party finds that, having regard to the principles set forth in paragraph (6) of the Final Act of the Conference referred to in Section I of this Annex, the interests of its air carrier or carriers are prejudiced by the carriage by the air carrier or carriers of the first Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country it shall so inform the first Contracting Party. If agreement cannot be reached by consultation between the Contracting Parties, it shall be open to the Contracting Party whose air carrier or carriers is or are affected to invoke the provisions of Article 9 of this Agreement.

(c) The Contracting Parties will, as soon as possible after the execution of this Agreement and from time to time thereafter, exchange information concerning the authorisations extended to their respective designated air carriers to render service to, through and from the territory of the other Contracting Party. This will include copies of current certificates and authorisations for service on the routes which are the subject of this Agreement, and for the future such new certificates and authorisations as may be issued, together with amendments, exemption orders and authorised service patterns.

V

(2) Where the onward carriage of traffic by an aircraft of different size from that employed on the earlier stage of the same route (hereinafter referred to as "change of gauge") is justified by reason of economy of operation, such change of gauge at a point in the territory of the United Kingdom or the territory of the United States shall not be made in violation of the principles set forth in the Final Act of the

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Conference on Civil Aviation held at Bermuda from January 15 to February 11, 1946 and, in particular, shall be subject to there being an adequate volume of through traffic.

(b) Where a change of gauge is made at a point in the territory of the United Kingdom or in the territory of the United States, the smaller aircraft will operate only in connection with the larger aircraft arriving at the point of change, so as to provide a connecting service which will thus normally wait on the arrival of the larger aircraft, for the primary purpose of carrying onward those passengers who have travelled to United Kingdom or United States territory in the larger aircraft to their ultimate destination in the smaller aircraft. Where there are vacancies in the smaller aircraft such vacancies may be filled with passengers from United Kingdom or United States territory respectively. It is understood however that the capacity of the smaller aircraft shall be determined with primary reference to the traffic travelling in the larger aircraft normally requiring to be carried onward.

(c) It is agreed that the arrangements under any part of the preceding paragraphs (a) and (b) shall be governed by and in no way restrictive of the standards set forth in paragraph (6) of the Final Act.

A. H. S.
W. J. B.
W. P. H.
L. J. D.
P. G. M.

G. P. B.
H. B. OR
S. M.
G. N.
L. W. P.

FINAL ACT OF THE CIVIL AVIATION CONFERENCE, HELD AT BERMUDA,
15TH JANUARY TO 11TH FEBRUARY, 1946

Bermuda, 11th February, 1946.

THE Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland,
Having decided to hold between themselves a Conference on Civil Aviation,

Appointed their respective delegates who are listed below:—

United States of America.

George P. Baker (Chairman of Delegation), Director, Office of Transport and Communications Policy, Department of State.
Harlee Branch, Member, Civil Aeronautics Board.
John D. Hickerson, Deputy Director, Office of European Affairs, Department of State.
Josh B. Lee, Member, Civil Aeronautics Board.
Stokeley W. Morgan, Chief, Aviation Division, Department of State.
George C. Neal, General Counsel, Civil Aeronautics Board.

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Garrison Norton, Deputy Director, Office of Transport and Communications Policy, Department of State.
L. Welch Pogue, Chairman, Civil Aeronautics Board.
Oswald Ryan, Member, Civil Aeronautics Board.
John Sherman, Liaison Consultant, Civil Aeronautics Board.

United Kingdom.

Sir Henry Self, K.C.M.G., K.B.E., C.B., (Chairman of Delegation), Director-General designate of Civil Aviation, Ministry of Civil Aviation.
Sir William P. Hildred, Kt., C.B., O.B.E., Director-General of Civil Aviation, Ministry of Civil Aviation.
W. J. Bigg, Colonial Office.
N. J. A. Cheetham, Foreign Office.
L. J. Dunnett, Ministry of Civil Aviation.
Peter G. Masefield, Civil Air Attaché, British Embassy, Washington.

Who met in Bermuda on the 15th January, 1946.

At the first plenary session, Sir Henry Self was elected Chairman of the Conference and the Conference was divided into two Committees. The members of the Committees and of the Sub-Committees, appointed by the respective Chairmen of the Delegations, are listed below:—

COMMITTEE I.

RATES AND TRAFFIC

Chairman: Sir Henry Self (United Kingdom).

Members:

United States.
Delegates.
George P. Baker.
Harilee Branch.
Josh B. Lee.
Stokeley W. Morgan.
George C. Neal.
L. Welch Pogue.
Oswald Ryan.
Advisers.
Colonel S. E. Gates.
W. John Kenney.
Major-General L. S. Kuter.
Livingston Satterthwaite.

Consultants.
Harold Bixby.
Terrell Drinkwater.
Julius C. Holmes.
John Leslie.
John E. Slater.
James H. Smith, Jun.

United Kingdom.
Delegates.
Sir William Hildred.
N. J. A. Cheetham.
L. J. Dunnett.
P. G. Masefield.
Advisers.
M. E. Bathurst.
Major J. R. McCrindle.
Vernon Crudge.

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SUB-COMMITTEE 1.—POLICY.

Chairman: Sir Henry Self (United Kingdom).

Members:

Delegates.
George P. Baker.
Stokeley W. Morgan.
L. Welch Pogue.

Delegate.
Sir William Hildred.

SUB-COMMITTEE 2.—DRAFTING.

Chairman: Stokeley W. Morgan (United States).

Members:

Delegate.
George C. Neal.
Adviser.
Colonel S. E. Gates.

Delegates.
L. J. Dunnett.
P. G. Masefield.
Adviser.
M. E. Bathurst.

SUB-COMMITTEE 3.—ROUTES.

Chairman: L. Welch Pogue (United States).

Members:

Delegates.
Harlee Branch.
Josh B. Lee.
Stokeley W. Morgan.
George C. Neal.
Oswald Ryan.
John Sherman.
Advisers.
William Fleming.
Colonel S. E. Gates.
Major-General L. S. Kuter.
Commander S. Jurika.
Livingston Satterthwaite.
Consultants.
Harold Bixby.
Terrell Drinkwater.
Julius C. Holmes.
John Leslie.
John E. Slater.
James H. Smith, Jun.

Delegates.
W. J. Bigg.
N. J. A. Cheetham.
L. J. Dunnett.
P. G. Masefield.
Advisers.
M. E. Bathurst.
Major J. R. McCrindle.
Vernon Crudge.

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COMMITTEE II.

AD Hoc.

Chairman: L. J. Dunnett (United Kingdom).

Delegates.
John D. Hickerson.
Stokeley W. Morgan.

Delegate.
N. J. A. Cheetham.

The Final Plenary Session was held on the 11th February, 1946.

As a result of the deliberations of the Conference there was formulated an Agreement between the Government of the United Kingdom and the Government of the United States relating to air services between their respective territories, and Annex thereto. (Attached hereto as Appendix I.)^[1]

The following resolution was adopted:—

Whereas representatives of the two Governments have met together in Bermuda to discuss Civil Aviation matters outstanding between them and have reached agreement thereon,

Whereas the two Governments have to-day concluded an Agreement relating to air services between their respective territories (hereinafter called "the Agreement"),

And whereas the two Governments have reached agreement on the procedure to be followed in the settlement of other matters in the field of Civil Aviation,

Now therefore the representatives of the two Governments in Conference resolve and agree as follows:—

(1) That the two Governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles; and to stimulate international air travel as a means of promoting friendly understanding and good will among peoples and ensuring as well the many indirect benefits of this new form of transportation to the common welfare of both countries.

(2) That the two Governments reaffirm their adherence to the principles and purposes set out in the preamble to the Convention on International Civil Aviation signed at Chicago on the 7th December, 1944.

(3) That the air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport.

(4) That there shall be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories (as defined in the Agreement) covered by the Agreement and its Annex.

(5) That, in the operation by the air carriers of either Government of the trunk services described in the Annex to the Agreement, the interest of the air carriers of the other Government shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

¹ [Ante.]

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(6) That it is the understanding of both Governments that services provided by a designated air carrier under the Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such air carrier is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in the Annex to the Agreement shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

- (a) To traffic requirements between the country of origin and the countries of destination;
- (b) to the requirements of through airline operation; and
- (c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

(7) That, in so far as the air carrier or carriers of one Government may be temporarily prevented through difficulties arising from the War from taking immediate advantage of the opportunity referred to in paragraph (4) above, the situation shall be reviewed between the Governments with the object of facilitating the necessary development, as soon as the air carrier or carriers of the first Government is or are in a position increasingly to make their proper contribution to the service.

(8) That duly authorised United States civil air carriers will enjoy non-discriminatory "Two Freedom" privileges and the exercise (in accordance with the Agreement or any continuing or subsequent agreement) of commercial traffic rights at airports located in territory of the United Kingdom which have been constructed in whole or in part with United States funds and are designated for use by international civil air carriers.

(9) That it is the intention of both Governments that there should be regular and frequent consultation between their respective aeronautical authorities (as defined in the Agreement) and that there should thereby be close collaboration in the observance of the principles and the implementation of the provisions outlined herein and in the Agreement and its Annex.

In witness whereof the following Delegates sign the present Final Act.

Done at Bermuda the eleventh day of February, 1946.

This Final Act shall be deposited in the Archives of the Government of the United Kingdom and a certified copy shall be transmitted by that Government to the Government of the United States of America.

United States of America.

GEORGE P. BAKER.
HARLEE BRANCH.
STOKELEY W. MORGAN.
GEORGE C. NEAL.
GARRISON NORTON.
L. WELCH POGUE.
OSWALD RYAN.
JOHN SHERMAN.

United Kingdom.

A. H. SELF.
WM. P. HILDRED.
W. J. BIGG.
L. J. DUNNETT.
PETER G. MASEFIELD.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRITISH AIRWAYS BOARD,

Petitioner,

against

CIVIL AERONAUTICS BOARD,

Respondent.

State of New York,
County of New York,
City of New York—ss.:

IRVING LIGHTMAN being duly sworn, deposes
and says that he is over the age of 18 years. That on the 12th
day of January, 1977, he served three copies of the
Joint Appendix on
James C. Schultz, Esq. General Counsel

the attorney for the Respondent
by depositing the same, properly enclosed in a securely sealed
post-paid wrapper, in a Branch Post Office regularly maintained
by the Government of the United States at 90 Church Street, Borough
of Manhattan, City of New York, directed to said attorney at
No. Civil Aeronautics Board, Washington, D.C.) ~~xxx~~,
that being the address designated by him for that purpose upon
the preceding papers in this action.

Irving Lightman

Sworn to before me this

12th day of January, 1977.

Courtney J. Brown
COURTNEY J. BROWN

Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1978